

# YEARBOOK 2016 ANNUAIRE

**NEW YORK II**  
**Documents of the Conference**





# **YEARBOOK**

# **2016**

# **ANNUAIRE**

**NEW YORK II**  
**Documents of the Conference**





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PART I

**Organization of  
the CMI**

# *Comité Maritime International*

## CONSTITUTION

2001<sup>1</sup>

### PART I - GENERAL

#### **Article 1**

##### **Name and Object**

The name of this organization is “Comité Maritime International.” It is a non-governmental not-for-profit international organization established in Antwerp in 1897, the object of which is to contribute by all appropriate means and activities to the unification of maritime law in all its aspects.

To this end it shall promote the establishment of national associations of maritime law and shall co-operate with other international organizations.

#### **Article 2**

##### **Existence and Domicile**

The juridical personality of the Comité Maritime International is established under the law of Belgium of 25<sup>th</sup> October 1919, as later amended. The Comité Maritime International is domiciled in the City of Antwerp, and its registered office is at Ernest Van Dijckkaai 8 B-2000

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<sup>1</sup> While meeting at Toledo, the Executive Council created on 17 October 2000 a committee in charge of drafting amendments to the Constitution, in order to comply with Belgian law so as to obtain juridical personality. This committee, chaired by Frank Wiswall and with the late Allan Philip, Alexander von Ziegler and Benoît Goemans as members, prepared the amendments which were sent to the National Member Associations on 15 December 2000. At Singapore the Assembly, after the adoption of two further amendments as per the suggestion of Patrice Rembauville-Nicolle speaking for the French delegation, unanimously approved the new Constitution. The Singapore Assembly also empowered the Executive Council to adopt any amendments to the approved text of the Constitution if required by the Belgian government. Exercising this authority, minor amendments were indeed adopted by the Executive Council, having no effect on the way in which the Comité Maritime International functions or is organised. As an example, Article 3.I.a has been slightly amended. Also Article 3.II has been expanded to embody in the Constitution itself the procedure governing the expulsion of Members rather than in rules adopted by the Assembly. By Decree of 9 November 2003 the King of Belgium granted juridical personality to the Comité Maritime International. By virtue of Article 50 of the Belgian Act of 27 June 1921, as incorporated by Article 41 of the Belgian Act of 2 May 2002, juridical personality was acquired at the date of the Decree, *i.e.*, 9 November 2003, which is also the date of entry into force of the present Constitution. Since 9 November 2003, the Comité Maritime International has existed as an International Not-for-Profit Association (*AISBL*) within the meaning of the Belgian Act of 27 June 1921.

# *Comité Maritime International*

## STATUTS

2001<sup>1</sup>

### I<sup>ère</sup> PARTIE - DISPOSITIONS GENERALES

#### **Article 1<sup>er</sup>**

##### **Nom et objet**

Le nom de l'organisation, objet des présents statuts, est "Comité Maritime International". Le Comité Maritime International est une organisation non-gouvernementale internationale sans but lucratif, fondée à Anvers en 1897, et dont l'objet est de contribuer, par tous travaux et moyens appropriés, à l'unification du droit maritime sous tous ses aspects.

Il favorisera à cet effet la création d'associations nationales de droit maritime. Il collaborera avec d'autres organisations internationales.

#### **Article 2**

##### **Existence et siège**

Le Comité Maritime International a la personnalité morale selon la loi belge du 25 octobre 1919 telle que modifiée ultérieurement. Le Comité Maritime International a son siège Ernest Van Dijckkaai 8 à B-2000 Anvers.

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<sup>1</sup> Réuni à Tolède, le Conseil exécutif a constitué, le 17 octobre 2000, une commission chargée de la réforme des statuts, nécessaire pour obtenir la personnalité morale en Belgique. Cette commission, présidée par Frank Wiswall et composée en outre de feu Allan Philip, d'Alexander von Ziegler et de Benoît Goemans, a préparé les modifications et les a adressées aux Associations nationales le 15 décembre 2000. A Singapour, l'Assemblée générale a, à l'unanimité, approuvé le 16 février 2001, le projet de modification préparé par la commission sus-dite, après avoir apporté deux modifications sur proposition de Patrice Rembauville-Nicolle, de la délégation française. L'Assemblée générale a également accordé au Conseil exécutif le pouvoir d'apporter des modifications qu'imposerait le gouvernement belge en vue de l'obtention de la personnalité morale. En application de cette résolution, les statuts ont subis quelques petites modifications, sans effet sur le fonctionnement ni l'organisation du CMI. Ainsi par exemple, l'article 3 I a) a été légèrement modifié et, les règles régissant la procédure d'exclusion de membres, jusqu'alors un texte séparé, ont été incorporées dans les statuts (article 3.II). Par Arrêté du 9 novembre 2003 le Roi des belges a accordé au Comité Maritime International la personnalité morale. En application de l'article 50 de la Loi belge du 27 juin 1921, tel qu'inséré par l'article 41 de la Loi belge du 2 mai 2002, la personnalité morale fût acquise à la date de l'Arrêté, soit, le 9 novembre 2003, également la date d'entrée en vigueur des présents statuts. Le Comité Maritime International est depuis le 9 novembre 2003 une Association Internationale Sans But Lucratif au sens de la Loi belge du 27 juin 1921.

Antwerp. Its address may be changed by decision of the Executive Council, and such change shall be published in the *Annexes du Moniteur belge*.

### **Article 3** **Membership and Liability**

#### **I**

- a) The voting Members of the Comité Maritime International are national (or multinational) Associations of Maritime Law elected to membership by the Assembly, the object of which Associations must conform to that of the Comité Maritime International and the membership of which must be fully open to persons (individuals or bodies having juridical personality in accordance with their national law and custom) who either are involved in maritime activities or are specialists in maritime law. Member Associations must be democratically constituted and governed, and must endeavour to present a balanced view of the interests represented in their Association.

Where in a State there is no national Association of Maritime Law in existence, and an organization in that State applies for membership of the Comité Maritime International, the Assembly may accept such organization as a Member of the Comité Maritime International if it is satisfied that the object of such organization, or one of its objects, is the unification of maritime law in all its aspects. Whenever reference is made in this Constitution to Member Associations, it will be deemed to include any organization admitted as a Member pursuant to this Article.

Only one organization in each State shall be eligible for membership, unless the Assembly otherwise decides. A multinational Association is eligible for membership only if there is no Member Association in any of its constituent States.

The national (or multinational) Member Associations of the Comité Maritime International are identified in a list to be published annually.

- b) Where a national (or multinational) Member Association does not possess juridical personality according to the law of the country where it is established, the members of such Member Association who are individuals or bodies having juridical personality in accordance with their national law and custom, acting together in accordance with their national law, shall be deemed to constitute that Member Association for purposes of its membership of the Comité Maritime International.
- c) Individual members of Member Associations may be elected by the Assembly as Titulary Members of the Comité Maritime International upon the proposal of the Association concerned, endorsed by the Executive Council. Individual persons may also be elected by the Assembly as Titulary Members upon the proposal of the Executive Council. Titulary Membership is of an honorary nature and shall be decided having regard to the contributions of the candidates to the work of the Comité Maritime International and/or to their services rendered in legal or maritime affairs in furtherance of international uniformity of

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*Constitution*

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Le siège peut être transféré dans tout autre lieu en Belgique par simple décision du Conseil exécutif publiée aux *Annexes du Moniteur belge*.

**Article 3****Membres et responsabilité****I**

- a) Les Membres avec droit de vote du Comité Maritime International sont les Associations nationales (ou multinationales) de droit maritime, élues Membres par l'Assemblée, dont les objectifs sont conformes à ceux du Comité Maritime International et dont la qualité de Membre doit être accessible à toutes personnes (personnes physiques ou personnes morales légalement constituées selon les lois et usages de leur pays d'origine) qui, ou bien participent aux activités maritimes, ou bien sont des spécialistes du droit maritime. Chaque Association membre doit être constituée et gérée de façon démocratique et doit maintenir l'équilibre entre les divers intérêts dans son sein.

Si dans un pays il n'existe pas d'Association nationale et qu'une organisation de ce pays pose sa candidature pour devenir Membre du Comité Maritime International, l'Assemblée peut accepter une pareille organisation comme Membre du Comité Maritime International après s'être assurée que l'objectif, ou un des objectifs, poursuivis par cette organisation est l'unification du droit maritime sous tous ses aspects.

Toute référence dans les présents statuts à des Associations membres comprendra toute organisation qui aura été admise comme Membre conformément au présent article.

Une seule organisation par pays est éligible en qualité de Membre du Comité Maritime International, à moins que l'Assemblée n'en décide autrement. Une association multinationale n'est éligible en qualité de Membre que si aucun des Etats qui la composent ne possède d'Association membre. Une liste à publier annuellement énumérera les Associations nationales (ou multinationales) membres du Comité Maritime International.

- b) Lorsqu'une Association nationale (ou multinationale) Membre du Comité Maritime International n'a pas la personnalité morale selon le droit du pays où cette association est établie les membres (qui sont des personnes physiques ou des personnes morales légalement constituées selon les lois et usages de leur pays d'origine) de cette Association, agissent ensemble selon leur droit national et seront sensés constituer l'Association membre en ce qui concerne l'affiliation de celle-ci au Comité Maritime International.
- c) Des membres individuels d'Associations Membres peuvent être élus Membres titulaires du Comité Maritime International par l'Assemblée sur proposition émanant de l'Association intéressée et ayant recueilli l'approbation du Conseil exécutif. Des personnes peuvent aussi, à titre individuel, être élues par l'Assemblée comme Membres titulaires sur proposition du Conseil exécutif. L'affiliation comme Membre titulaire aura un caractère honorifique et sera décidée en tenant compte des contributions apportées par les candidats à l'oeuvre du Comité Maritime

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*Part I - Organization of the CMI*

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maritime law or related commercial practice. The Titulary Members of the Comité Maritime International are identified in a list to be published annually.

Titulary Members presently or formerly belonging to an association which is no longer a member of the Comité Maritime International may remain individual Titulary Members at large, pending the formation of a new Member Association in their State.

- d) Nationals of States where there is no Member Association in existence and who have demonstrated an interest in the object of the Comité Maritime International may upon the proposal of the Executive Council be elected as Provisional Members. A primary objective of Provisional Membership is to facilitate the organization and establishment of new Member national or regional Associations of Maritime Law. Provisional Membership is not normally intended to be permanent, and the status of each Provisional Member will be reviewed at three-year intervals. However, individuals who have been Provisional Members for not less than five years may upon the proposal of the Executive Council be elected by the Assembly as Titulary Members, to the maximum number of three such Titulary Members from any one State. The Provisional Members of the Comité Maritime International are identified in a list to be published annually.
- e) The Assembly may elect to Membership *honoris causa* any individual person who has rendered exceptional service to the Comité Maritime International or in the attainment of its object, with all of the rights and privileges of a Titulary Member but without payment of subscriptions. Members *honoris causa* may be designated as honorary officers of the Comité Maritime International if so proposed by the Executive Council. Members *honoris causa* shall not be attributed to any Member Association or State, but shall be individual members of the Comité Maritime International as a whole. The Members *honoris causa* of the Comité Maritime International are identified in a list to be published annually.
- f) International organizations which are interested in the object of the Comité Maritime International may be elected as Consultative Members. The Consultative Members of the Comité Maritime International are identified in a list to be published annually.

## II

- a) Members may be expelled from the Comité Maritime International by reason:
  - (i) of default in payment of subscriptions;
  - (ii) of conduct obstructive to the object of the Comité as expressed in the Constitution; or
  - (iii) of conduct likely to bring the Comité or its work into disrepute.
- b) (i) A motion to expel a Member may be made:
  - (A) by any Member Association or Titulary Member of the Comité;



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*Constitution*


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International, et/ou des services qu'ils auront rendus dans le domaine du droit ou des affaires maritimes ou des pratiques commerciales qui y sont liées. Une liste à publier annuellement énumérera les Membres titulaires du Comité Maritime International. Les Membres titulaires appartenant ou ayant appartenu à une Association qui n'est plus Membre du Comité Maritime International peuvent rester Membres titulaires individuels hors cadre, en attendant la constitution d'une nouvelle Association membre dans leur Etat.

- d) Les nationaux des pays où il n'existe pas d'Association membre mais qui ont fait preuve d'intérêt pour les objectifs du Comité Maritime International peuvent, sur proposition du Conseil exécutif, être élus comme Membres Provisoires. L'un des objectifs essentiels du statut de Membre Provisoire est de favoriser la mise en place et l'organisation, au plan national ou régional, de nouvelles Associations de Droit Maritime affiliées au Comité Maritime International. Le statut de Membre Provisoire n'est pas normalement destiné à être permanent, et la situation de chaque Membre Provisoire sera examinée tous les trois ans. Cependant, les personnes physiques qui sont Membres Provisoires depuis cinq ans au moins peuvent, sur proposition du Conseil exécutif, être élues Membres titulaires par l'Assemblée, à concurrence d'un maximum de trois par pays. Une liste à publier annuellement énumérera les Membres Provisoires du Comité Maritime International.
- e) L'Assemblée peut élire Membre honoraire, jouissant des droits et privilèges d'un Membre titulaire mais dispensé du paiement des cotisations, toute personne physique ayant rendu des services exceptionnels au Comité Maritime International. Des membres honoraires peuvent, sur proposition du Conseil exécutif, être désignés comme Membres honoraires du Bureau, y compris comme Président honoraire ou Vice-Président honoraire, si ainsi proposé par le Conseil exécutif. Les membres honoraires ne relèvent d'aucune Association membre ni d'aucun Etat, mais sont à titre personnel membres du Comité Maritime International pour l'ensemble de ses activités. Une liste à publier annuellement énumérera les membres honoraires du Comité Maritime International.
- f) Les organisations internationales qui s'intéressent aux objectifs du Comité Maritime International peuvent être élues membres consultatifs. Une liste à publier annuellement énumérera les membres consultatifs du Comité Maritime International.

## II

- a) Des membres peuvent être exclus du Comité Maritime International en raison
  - (i) de leur carence dans le paiement de leur contribution;
  - (ii) de leur conduite faisant obstacle à l'objet du Comité tel qu'énoncé aux statuts;
  - (iii) de leur conduite susceptible de discréditer le Comité ou son oeuvre.
- b) (i) Une requête d'exclusion d'un Membre sera faite:
  - (A) par toute Association Membre ou par un Membre titulaire;

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*Part I - Organization of the CMI*

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- or  
(B) by the Executive Council.
- (ii) Such motion shall be made in writing and shall set forth the reason(s) for the motion.
  - (iii) Such motion must be filed with the Secretary-General or Administrator, and shall be copied to the Member in question.
- c) A motion to expel made under sub-paragraph II(b)(i)(A) of this Article shall be forwarded to the Executive Council for first consideration.
- (i) If such motion is approved by the Executive Council, it shall be forwarded to the Assembly for consideration pursuant to Article 7(b).
  - (ii) If such motion is not approved by the Executive Council, the motion may nevertheless be laid before the Assembly at its meeting next following the meeting of the Executive Council at which the motion was considered.
- d) A motion to expel shall not be debated in or acted upon by the Assembly until at least ninety (90) days have elapsed since the original motion was copied to the Member in question. If less than ninety (90) days have elapsed, consideration of the motion shall be deferred to the next succeeding Assembly.
- e) (i) The Member in question may offer a written response to the motion to expel, and/or may address the Assembly for a reasonable period in debate upon the motion.
- (ii) In the case of a motion to expel which is based upon default in payment under paragraph II(a)(i) of this Article, actual payment in full of all arrears currently owed by the Member in question shall constitute a complete defence to the motion, and upon acknowledgment of payment by the Treasurer the motion shall be deemed withdrawn.
- f) (i) In the case of a motion to expel which is based upon default in payment under paragraph II(a) of this Article, expulsion shall require the affirmative vote of a simple majority of the Member Associations present, entitled to vote, and voting.
- (ii) In the case of a motion to expel which is based upon paragraph II(a)(ii) and (iii) of this Article, expulsion shall require the affirmative vote of a two-thirds majority of the Member Associations present, entitled to vote, and voting.
- g) Amendments to these provisions may be adopted in compliance with Article 6. Proposals of amendments shall be made in writing and shall be transmitted to all National Associations at least sixty (60) days prior to the annual meeting of the Assembly at which the proposed amendments will be considered.

### III

The liability of Members for obligations of the Comité Maritime International shall be limited to the amounts of their subscriptions paid or currently due and payable to the Comité Maritime International.

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*Constitution*


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- (B) par le Conseil exécutif.
- (ii) Une requête d'exclusion d'un Membre se fera par écrit et en exposera les motifs.
  - (iii) La requête d'exclusion doit être déposée chez le Secrétaire général ou chez l'Administrateur et sera transmise en copie au Membre en question.
- c) Une requête d'exclusion faite en vertu de l'alinéa II (b) (i) (A) ci-dessus sera transmise pour examen au Conseil exécutif pour la prendre en considération.
- (i) Si telle requête est approuvée par le Conseil exécutif, elle sera transmise à l'Assemblée pour délibération telle que prévue à l'article 7 b) des statuts.
  - (ii) Si la requête n'est pas approuvée par le Conseil exécutif, elle peut néanmoins être soumise à la réunion de l'Assemblée suivant immédiatement la réunion du Conseil exécutif où la requête a été examinée.
- d) Une demande d'exclusion ne fera pas l'objet de délibération ou ne il n'en sera pas pris acte par l'Assemblée si au moins quatre-vingt-dix jours ne se sont pas écoulés depuis la communication de la copie de la requête d'exclusion au Membre visé. Si moins de quatre-vingt-dix jours se sont écoulés, la requête sera prise en considération à la prochaine réunion de l'Assemblée.
- e) (i) Le Membre en question peut présenter une réplique écrite à la requête d'exclusion, et/ou peut prendre la parole à l'Assemblée pendant la délibération sur la requête.
- (ii) Dans le cas d'une requête d'exclusion appuyée sur une carence de paiement, comme le prévoit l'article 3 II a) (i) ci-dessus, le paiement effectif de tous les arriérés dus par le Membre visé, constituera une défense suffisante et, pourvu que le Trésorier confirme le paiement, la requête sera présumée être retirée.
- f) (i) Dans le cas d'une requête d'exclusion appuyée sur une carence de paiement prévue à l'alinéa II(a) ci-dessus, le Membre sera exclu à la majorité simple des suffrages exprimés par les Membres en droit de voter.
- (ii) En cas de requête d'exclusion appuyée sur un motif prévu au II a) (ii) et (iii) ci-dessus, le Membre sera exclu par un vote des deux tiers des suffrages exprimés par les Membres en droit de voter.
- g) Des modifications aux présentes dispositions peuvent être adoptées conformément à l'article 6 des statuts. Les propositions de modifications se feront par écrit et seront transmises à toutes les Associations Membres au plus tard soixante jours avant la réunion annuelle de l'Assemblée à laquelle les modifications proposées seront prises en considération.

### III.

La responsabilité des Membres au titre des obligations du Comité Maritime International sera limitée au montant de leurs cotisations payées ou dues et exigibles par le Comité Maritime International.

## PART II - ASSEMBLY

### Article 4

#### Composition

The Assembly shall consist of all Members of the Comité Maritime International and the members of the Executive Council.

Each Member Association and each Consultative Member may be represented in the Assembly by not more than three delegates.

As approved by the Executive Council, the President may invite Observers to attend all or parts of the meetings of the Assembly.

### Article 5

#### Meetings and Quorum

The Assembly shall meet annually on a date and at a place decided by the Executive Council. The Assembly shall also meet at any other time, for a specified purpose, if requested by the President, by ten of its Member Associations or by the Vice-Presidents. At least six weeks notice shall be given of such meetings.

At any meeting of the Assembly, the presence of not less than five Member Associations entitled to vote shall constitute a lawful quorum.

### Article 6

#### Agenda and Voting

Matters to be dealt with by the Assembly, including election to vacant offices, shall be set out in the agenda accompanying the notice of the meeting. Decisions may be taken on matters not set out in the agenda, other than amendments to this Constitution, provided no Member Association represented in the Assembly objects to such procedure.

Members *honoris causa* and Titulary, Provisional and Consultative Members shall enjoy the rights of presence and voice, but only Member Associations in good standing shall have the right to vote.

Each Member Association present in the Assembly and entitled to vote shall have one vote. The right to vote cannot be delegated or exercised by proxy. The vote of a Member Association shall be cast by its president, or by another of its members duly authorized by that Association.

All decisions of the Assembly shall be taken by a simple majority of Member Associations present, entitled to vote, and voting. However, amendments to this Constitution or to any Rules adopted pursuant to Article 7(h) and (i) shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting. The Administrator, or another person designated by the President, shall submit to the Belgian Ministry of Justice any amendments of this Constitution and shall secure their publication in the *Annexes du Moniteur belge*.

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*Constitution*

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## 2<sup>ème</sup> PARTIE - ASSEMBLEE

### Article 4

#### Composition

L'Assemblée est composée de tous les membres du Comité Maritime International et des membres du Conseil exécutif.

Toute Association membre et tout Membre consultatif peuvent être représentés à l'Assemblée par trois délégués au maximum.

Le Président peut, avec l'approbation du Conseil exécutif, inviter des observateurs à assister, totalement ou partiellement, aux réunions de l'Assemblée.

### Article 5

#### Réunions et quorum

L'Assemblée se réunit chaque année à la date et au lieu fixés par le Conseil exécutif. L'Assemblée se réunit en outre à tout autre moment, avec un ordre du jour déterminé, à la demande du Président, de dix de ses Associations Membres, ou des Vice-Présidents. Le délai de convocation est de six semaines au moins.

A chaque réunion de l'Assemblée, la présence d'au moins cinq Associations membres avec droit de vote constituera un quorum de présence suffisant.

### Article 6

#### Ordre du jour et votes

Les questions dont l'Assemblée devra traiter, y compris les élections à des charges vacantes, seront exposées dans l'ordre du jour accompagnant la convocation aux réunions. Des décisions peuvent être prises sur des questions non inscrites à l'ordre du jour, exception faite de modifications aux présents statuts, pourvu qu'aucune Association membre représentée à l'Assemblée ne s'oppose à cette façon de faire.

Chaque Association membre présente à l'Assemblée et jouissant du droit de vote dispose d'une voix. Le droit de vote ne peut pas être délégué ni exercé par procuration. La voix d'une Association membre sera émise par son Président, ou, par un autre membre mandaté à cet effet et ainsi certifié par écrit à l'Administrateur.

Toutes les décisions de l'Assemblée sont prises à la majorité simple des Associations membres présentes, jouissant du droit de vote et prenant part au vote. Toutefois, le vote positif d'une majorité des deux tiers de toutes les Associations membres présentes, jouissant du droit de vote et prenant part au vote sera nécessaire pour modifier les présents statuts ou des règles adoptées en application de l'Article 7 (h) et (i). L'Administrateur, ou une personne désignée par le Président, soumettra au Ministère de la Justice belge toute modification des statuts et veillera à sa publication aux *Annexes du Moniteur belge*.

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*Part I - Organization of the CMI*

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**Article 7**  
**Functions**

The functions of the Assembly are:

- a) To elect the Officers of the Comité Maritime International;
- b) To elect Members of and to suspend or expel Members from the Comité Maritime International;
- c) To fix the amounts of subscriptions payable by Members to the Comité Maritime International;
- d) To elect auditors;
- e) To consider and, if thought fit, approve the accounts and the budget;
- f) To consider reports of the Executive Council and to take decisions on the future activity of the Comité Maritime International;
- g) To approve the convening and decide the agenda of, and ultimately approve resolutions adopted by, International Conferences;
- h) To adopt rules governing the expulsion of Members;
- i) To adopt rules of procedure not inconsistent with the provisions of this Constitution; and
- j) To amend this Constitution.

**PART III - OFFICERS****Article 8**  
**Designation**

The Officers of the Comité Maritime International shall be:

- a) The President,
- b) The Vice-Presidents,
- c) The Secretary-General,
- d) The Treasurer (and Head Office Director) (hereafter “The Treasurer”),
- e) The Administrator (if an individual),
- f) The Executive Councillors, and
- g) The Immediate Past President.

**Article 9**  
**President**

The President of the Comité Maritime International shall preside over the Assembly, the Executive Council, and the International Conferences convened by the Comité Maritime International. He shall be an ex-officio member of any Committee, International Sub-Committee or Working Group appointed by the Executive Council.

With the assistance of the Secretary-General and the Administrator he shall carry out the decisions of the Assembly and of the Executive Council, supervise the work of the International Sub-Committees and Working Groups, and represent the Comité Maritime International externally.

The President shall have authority to conclude and execute agreements on behalf of the Comité Maritime International, and to delegate this authority to other officers of the Comité Maritime International.

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*Constitution*

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**Article 7****Fonctions**

Les fonctions de l'Assemblée consistent à:

- a) élire les Membres du Bureau du Comité Maritime International;
- b) élire des Membres du Comité Maritime International et en suspendre ou exclure;
- c) fixer les montants des cotisations dues par les Membres au Comité Maritime International;
- d) élire des réviseurs de comptes;
- e) examiner et, le cas échéant, approuver les comptes et le budget;
- f) étudier les rapports du Conseil exécutif et prendre des décisions concernant les activités futures du Comité Maritime International;
- g) approuver la convocation et fixer l'ordre du jour de Conférences Internationales du Comité Maritime International, et approuver en dernière lecture les résolutions adoptées par elles;
- h) adopter des règles régissant l'exclusion de Membres;
- i) adopter des règles de procédure sous réserve qu'elles soient conformes aux présents statuts;
- j) modifier les présents statuts.

**3<sup>ème</sup> PARTIE- MEMBRES DU BUREAU****Article 8****Désignation**

Les Membres du Bureau du Comité Maritime International sont:

- a) le Président,
- b) les Vice-Présidents,
- c) le Secrétaire général,
- d) le Trésorier (et Directeur en chef du bureau) (ci-après «le Trésorier»),
- e) l'Administrateur (s'il est une personne physique),
- f) les Conseillers exécutifs, et
- g) le Président précédant.

**Article 9****Le Président**

Le Président du Comité Maritime International préside l'Assemblée, le Conseil exécutif et les Conférences Internationales convoquées par le Comité Maritime International. Il est Membre de droit de tout comité, de toute commission internationale ou de tout groupe de travail désignés par le Conseil exécutif.

Avec le concours du Secrétaire général et de l'Administrateur il met à exécution les décisions de l'Assemblée et du Conseil exécutif, surveille les travaux des commissions internationales et des groupes de travail, et représente, à l'extérieur, le Comité Maritime International.

Le Président aura le pouvoir de conclure des contrats et de les exécuter au nom et pour le compte du Comité Maritime International, et de donner tel pouvoir à d'autres Membres du Bureau du Comité Maritime International.

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*Part I - Organization of the CMI*

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The President shall have authority to institute legal action in the name and on behalf of the Comité Maritime International, and to delegate such authority to other officers of the Comité Maritime International. In case of the impeachment of the President or other circumstances in which the President is prevented from acting and urgent measures are required, five officers together may decide to institute such legal action provided notice is given to the other members of the Executive Council. The five officers taking such decision shall not take any further measures by themselves unless required by the urgency of the situation.

In general, the duty of the President shall be to ensure the continuity and the development of the work of the Comité Maritime International.

The President shall be elected for a term of three years and shall be eligible for re-election for one additional term.

### **Article 10**

#### **Vice-Presidents**

There shall be two Vice-Presidents of the Comité Maritime International, whose principal duty shall be to advise the President and the Executive Council, and whose other duties shall be assigned by the Executive Council.

The Vice-Presidents, in order of their seniority as officers of the Comité Maritime International, shall substitute for the President when the President is absent or is unable to act.

Each Vice-President shall be elected for a term of three years, and shall be eligible for re-election for one additional term.

### **Article 11**

#### **Secretary-General**

The Secretary-General shall have particular responsibility for organization of the non-administrative preparations for International Conferences, Seminars and Colloquia convened by the Comité Maritime International, and to maintain liaison with other international organizations. He shall have such other duties as may be assigned by the Executive Council or the President.

The Secretary-General shall be elected for a term of three years, and shall be eligible for re-election without limitation upon the number of terms.

### **Article 12**

#### **Treasurer**

The Treasurer shall be responsible for the funds of the Comité Maritime International, and shall collect and disburse, or authorise disbursement of, funds as directed by the Executive Council.

The Treasurer shall maintain adequate accounting records. The Treasurer shall also prepare financial statements for the preceding calendar year in accordance with current International Accounting Standards, and shall prepare proposed budgets for the current and next succeeding calendar years.

The Treasurer shall submit the financial statements and the proposed



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*Constitution*

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Le Président a le pouvoir d'agir en justice au nom et pour le compte de Comité Maritime International. Il peut donner tel pouvoir à d'autres Membres du Bureau du Comité Maritime International. En cas d'empêchement du Président, ou si pour quelque motif que ce soit celui-ci est dans l'impossibilité d'agir et que des mesures urgentes s'imposent, cinq Membres du Bureau, agissant ensemble, peuvent décider d'agir en justice, pourvu qu'ils en avisent les autres Membres du Bureau. Ceux-ci ne prendront d'autres mesures que celles dictées par l'urgence.

D'une manière générale, la mission du Président consiste à assurer la continuité et le développement de l'oeuvre du Comité Maritime International.

Le Président est élu pour un mandat de trois ans et il est rééligible une fois.

**Article 10****Les Vice-Présidents**

Le Comité Maritime International comprend deux Vice-Présidents, dont la mission principale est de conseiller le Président et le Conseil exécutif, et qui peuvent se voir confier d'autres missions par le Conseil exécutif.

Le Vice-Président le plus ancien comme Membre du Bureau du Comité Maritime International supplée le Président quand celui-ci est absent ou dans l'impossibilité d'exercer sa fonction.

Chacun des Vice-Présidents est élu pour un mandat de trois ans, renouvelable une fois.

**Article 11****Le Secrétaire général**

Le Secrétaire général a tout spécialement la responsabilité d'organiser les préparatifs, autres qu'administratifs, des Conférences Internationales, séminaires et colloques convoqués par le Comité Maritime International, et d'entretenir des rapports avec d'autres organisations internationales. D'autres missions peuvent lui être confiées par le Conseil exécutif et le Président.

Le Secrétaire Général est élu pour un mandat de trois ans, renouvelable sans limitation de durée. Le nombre de mandats successifs du Secrétaire Général est illimité.

**Article 12****Le Trésorier**

Le Trésorier répond des fonds du Comité Maritime International, il encaisse les fonds et en effectue ou en autorise le déboursement conformément aux instructions du Conseil exécutif.

Le Trésorier tient les livres comptables. Il prépare les bilans financiers de l'année civile précédente conformément aux normes comptables internationales, et prépare les budgets proposés pour l'année civile en cours et la suivante.

Le Trésorier soumet les bilans financiers et les budgets proposés pour révision par les réviseurs et le Comité de révision, désigné par le Conseil

budgets for review by the auditors and the Audit Committee appointed by the Executive Council, and following any revisions shall present them for review by the Executive Council and approval by the Assembly not later than the first meeting of the Executive Council in the calendar year next following the year to which the financial statements relate.

The Treasurer shall be elected for a term of three years, and shall be eligible for re-election without limitation upon the number of terms.

### **Article 13**

#### **Administrator**

The functions of the Administrator are:

- a) To give official notice of all meetings of the Assembly and the Executive Council, of International Conferences, Seminars and Colloquia, and of all meetings of Committees, International Sub-Committees and Working Groups;
- b) To circulate the agendas, minutes and reports of such meetings;
- c) To make all necessary administrative arrangements for such meetings;
- d) To take such actions, either directly or by appropriate delegation, as are necessary to give effect to administrative decisions of the Assembly, the Executive Council, and the President;
- e) To circulate such reports and/or documents as may be requested by the President, the Secretary-General or the Treasurer, or as may be approved by the Executive Council;
- f) To keep current and to ensure annual publication of the lists of Members pursuant to Article 3; and
- g) In general to carry out the day by day business of the secretariat of the Comité Maritime International.

The Administrator may be an individual or a body having juridical personality. If a body having juridical personality, the Administrator shall be represented on the Executive Council by one natural individual person. If an individual, the Administrator may also serve, if elected to that office, as Treasurer of the Comité Maritime International.

The Administrator, if an individual, shall be elected for a term of three years, and shall be eligible for re-election without limitation upon the number of terms. If a body having juridical personality, the Administrator shall be appointed by the Assembly upon the recommendation of the Executive Council, and shall serve until a successor is appointed.

### **Article 14**

#### **Executive Councillors**

There shall be eight Executive Councillors of the Comité Maritime International, who shall have the functions described in Article 18.

The Executive Councillors shall be elected upon individual merit, also giving due regard to balanced representation of the legal systems and geographical areas of the world characterised by the Member Associations.

Each Executive Councillor shall be elected for a term of three years, and shall be eligible for re-election for one additional term.

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exécutif; il les présente après correction au Conseil exécutif pour révision et à l'Assemblée pour approbation au plus tard à la première réunion du Conseil exécutif pendant l'année civile suivant l'année comptable en question.

Le Trésorier est élu pour un mandat de trois ans. Son mandat est renouvelable. Le nombre de mandats successifs du Trésorier est illimité.

### **Article 13** **L'Administrateur**

Les fonctions de l'Administrateur consistent à:

- a) envoyer les convocations à toutes réunions de l'Assemblée et du Conseil exécutif, des conférences internationales, séminaires et colloques, ainsi qu'à toutes réunions de comités, de commissions internationales et de groupes de travail,
- b) distribuer les ordres du jour, procès-verbaux et rapports de ces réunions,
- c) prendre toutes les dispositions administratives utiles en vue de ces réunions,
- d) entreprendre toute action, de sa propre initiative ou par délégation, nécessaire pour donner plein effet aux décisions de nature administrative prises par l'Assemblée, le Conseil exécutif, et le Président,
- e) assurer la distribution de rapports et documents demandés par le Président, le Secrétaire Général ou le Trésorier, ou approuvés par le Conseil exécutif,
- f) maintenir à jour et assurer la publication annuelle des listes de Membres en application de l'article 3;
- g) d'une manière générale accomplir la charge quotidienne du secrétariat du Comité Maritime International.

L'Administrateur peut être une personne physique ou une personne morale. Si l'Administrateur est une personne morale, elle sera représentée par une personne physique pour pouvoir siéger au Conseil exécutif. L'Administrateur personne physique peut également exercer la fonction de Trésorier du Comité Maritime International, s'il est élu à cette fonction.

L'Administrateur personne physique est élu pour un mandat de trois ans. Son mandat est renouvelable. Le nombre de mandats successifs de l'Administrateur est illimité. L'Administrateur personne morale est élu par l'Assemblée sur proposition du Conseil exécutif et reste en fonction jusqu'à l'élection d'un successeur.

### **Article 14** **Les Conseillers exécutifs**

Le Comité Maritime International compte huit Conseillers exécutifs, dont les fonctions sont décrites à l'article 18.

Les Conseillers exécutifs sont élus en fonction de leur mérite personnel, eu égard également à une représentation équilibrée des systèmes juridiques et des régions du monde auxquels les Association Membres appartiennent.

Chaque Conseiller exécutif est élu pour un mandat de trois ans, renouvelable une fois.

## **Article 15**

### **Nominations**

A Nominating Committee shall be established for the purpose of nominating individuals for election to any office of the Comité Maritime International.

The Nominating Committee shall consist of:

- a) A chairman, who shall have a casting vote where the votes are otherwise equally divided, and who shall be elected by the Executive Council,
- b) The President and past Presidents,
- c) One member elected by the Vice-Presidents, and
- d) One member elected by the Executive Councillors.

Notwithstanding the foregoing paragraph, no person who is a candidate for office may serve as a member of the Nominating Committee during consideration of nominations to the office for which he is a candidate.

On behalf of the Nominating Committee, the Chairman shall determine first:

- a) whether any officers eligible for re-election are available to serve for an additional term and to receive a statement from such officers as to the contributions they have made to the Executive Council during their term;
- b) whether Member Associations wish to propose candidates for possible nomination by the Nominating Committee as an Executive Councillor, or other Officer.

The Chairman shall then notify the Member Associations and seek their views concerning the candidates for nomination. The Nominating Committee shall then make nominations taking such views into account.

Following the decisions of the Nominating Committee, the chairman shall forward its nominations to the Administrator in ample time for distribution not less than 45 days before the annual meeting of the Assembly at which nominees are to be elected.

Member Associations may make nominations for election to any office independently of the Nominating Committee, provided such nominations are forwarded to the Administrator in writing not less than 15 working days before the annual meeting of the Assembly at which nominees are to be elected.

The Executive Council may make nominations for election to the offices of Secretary-General, Treasurer and/or Administrator. Such nominations shall be forwarded to the chairman of the Nominating Committee at least one-hundred twenty days before the annual meeting of the Assembly at which nominees are to be elected.

## **Article 16**

### **Immediate Past President**

The Immediate Past President of the Comité Maritime International shall have the option to attend all meetings of the Executive Council, and at his discretion shall advise the President and the Executive Council.

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*Constitution*

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## **Article 15**

### **Présentations de candidatures**

Un Comité de Présentation de candidatures est mis en place avec mission de présenter des personnes physiques en vue de leur élection à toute fonction au sein du Comité Maritime International.

Le Comité de Présentation de candidatures se compose de:

- a) un président, qui a voix prépondérante en cas de partage des voix, et qui est élu par le Conseil exécutif;
- b) le Président et les anciens Présidents;
- c) un Membre élu par les Vice-Présidents;
- d) un Membre élu par les Conseillers exécutifs.

Nonobstant les dispositions de l'alinéa qui précède, aucun candidat ne peut siéger au sein du Comité de Présentation pendant la discussion des présentations intéressant la fonction à laquelle il est candidat.

Au nom du comité de nomination, le Président devra premièrement déterminer:

- a) si des membres du conseil exécutif, éligibles à réélection, sont disponibles pour effectuer un mandat supplémentaire et recevoir une déclaration de ces membres sur leurs contributions au Conseil Exécutif au cours de leur mandat;
- b) si des Associations membres souhaitent proposer des candidats pour une possible nomination par le comité de nomination en tant que conseiller exécutif, ou autre membre du conseil exécutif.

Le Président devra ensuite informer les associations membres et rechercher leurs avis concernant le candidats à la nomination. Le comité de nomination devra ensuite procéder aux nominations en tenant compte de ces avis.

Le président du Comité de Présentation transmet les propositions ainsi formulées à l'Administrateur suffisamment à l'avance pour qu'elles soient diffusés au plus tard 45 jours avant l'Assemblée annuelle appelée à élire des candidats proposés.

Des Associations membres peuvent, indépendamment du Comité de Présentation, formuler des propositions d'élection pour toute fonction, pourvu que celles-ci soient transmises à l'Administrateur au plus tard 15 jours ouvrables avant l'Assemblée annuelle appelée à élire des candidats proposés.

Le Comité Exécutif peut présenter des propositions d'élection aux fonctions de Secrétaire général, Trésorier, et/ou Administrateur. Telles propositions seront transmises au Président du Comité des Présentations au plus tard cent-vingt jours avant l'Assemblée annuelle appelée à élire des candidats proposés.

## **Article 16**

### **Le Président sortant**

Le Président sortant du Comité Maritime International a la faculté d'assister à toutes les réunions du Conseil exécutif, et peut, s'il le désire, conseiller le Président et le Conseil exécutif.

## PART IV - EXECUTIVE COUNCIL

### **Article 17** **Composition**

The Executive Council shall consist of:

- a) The President,
- b) The Vice-Presidents,
- c) The Secretary-General,
- d) The Treasurer,
- e) The Administrator (if an individual),
- f) The Executive Councillors, and
- g) The Immediate Past President.

### **Article 18** **Functions**

The functions of the Executive Council are:

- a) To receive and review reports concerning contact with:
  - (i) The Member Associations,
  - (ii) The CMI Charitable Trust, and
  - (iii) International organizations;
- b) To review documents and/or studies intended for:
  - (i) The Assembly,
  - (ii) The Member Associations, relating to the work of the Comité Maritime International or otherwise advising them of developments, and
  - (iii) International organizations, informing them of the views of the Comité Maritime International on relevant subjects;
- c) To initiate new work within the object of the Comité Maritime International, to establish Standing Committees, International Sub-Committees and Working Groups to undertake such work, to appoint Chairmen, Deputy Chairmen and Rapporteurs for such bodies, and to supervise their work;
- d) To initiate and to appoint persons to carry out by other methods any particular work appropriate to further the object of the Comité Maritime International;
- e) To encourage and facilitate the recruitment of new members of the Comité Maritime International;
- f) To oversee the finances of the Comité Maritime International and to appoint an Audit Committee;
- g) To make interim appointments, if necessary, to the offices of Secretary-General, Treasurer and Administrator;
- h) To nominate, for election by the Assembly, independent auditors of the annual financial statements prepared by the Treasurer and/or the accounts of the Comité Maritime International, and to make interim appointments of such auditors if necessary;
- i) To review and approve proposals for publications of the Comité Maritime International;

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**4<sup>ème</sup> PARTIE - CONSEIL EXÉCUTIF****Article 17  
Composition**

Le Conseil exécutif est composé:

- a) du Président,
- b) des Vice-Présidents,
- c) du Secrétaire général,
- d) du Trésorier,
- e) de l'Administrateur, s'il est une personne physique,
- f) des Conseillers exécutifs,
- g) du Président sortant.

**Article 18  
Fonctions**

Les fonctions du Conseil exécutif sont:

- a) de recevoir et d'examiner des rapports concernant les relations avec:
  - (i) les Associations membres,
  - (ii) le Fonds de Charité du Comité Maritime International ("CMI Charitable Trust"), et
  - (iii) les organisations internationales;
- b) d'examiner les documents et études destinés:
  - (i) à l'Assemblée,
  - (ii) aux Associations membres, concernant l'oeuvre du Comité Maritime International, et en les avisant de tout développement utile,
  - (iii) aux organisations internationales, pour les informer des points de vue du Comité Maritime International sur des sujets adéquats;
- c) d'aborder l'étude de nouveaux travaux entrant dans le domaine du Comité Maritime International, de créer à cette fin des comités permanents, des commissions internationales et des groupes de travail, de désigner les Présidents, les Présidents Adjoints et les Rapporteurs de ces comités, commissions et groupes de travail, et de contrôler leur activité;
- d) d'aborder toute autre étude que ce soit pourvu qu'elle s'inscrive dans la poursuite de l'objet du Comité Maritime International, et de nommer toutes personnes à cette fin;
- e) d'encourager et de favoriser le recrutement de nouveaux Membres du Comité Maritime International;
- f) de contrôler les finances du Comité Maritime International et de nommer un Comité de révision;
- g) en cas de besoin, de pourvoir à titre provisoire à une vacance de la fonction de Secrétaire général, de Trésorier ou d'Administrateur;
- h) de présenter pour élection par l'Assemblée des réviseurs indépendants chargés de réviser les comptes financiers annuels préparés par le Trésorier et/ou les comptes du Comité Maritime International, et, au besoin, de pourvoir à titre provisoire à une vacance de la fonction de réviseur;
- i) d'examiner et d'approuver les propositions de publications du Comité Maritime International;

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*Part I - Organization of the CMI*

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- j) To set the dates and places of its own meetings and, subject to Article 5, of the meetings of the Assembly, and of Seminars and Colloquia convened by the Comité Maritime International;
- k) To propose the agenda of meetings of the Assembly and of International Conferences, and to decide its own agenda and those of Seminars and Colloquia convened by the Comité Maritime International;
- l) To carry into effect the decisions of the Assembly;
- m) To report to the Assembly on the work done and on the initiatives adopted.

The Executive Council may establish its own Committees and Working Groups, and delegate to them such portions of its work as it deems suitable. Reports of such Committees and Working Groups shall be submitted to the Executive Council and to no other body.

### **Article 19**

#### **Meetings and Quorum**

The Executive Council shall meet not less often than twice annually; it may when necessary meet by electronic means, but shall meet in person at least once annually unless prevented by circumstances beyond its control. The Executive Council may, however, take decisions when circumstances so require without a meeting having been convened, provided that all its members are fully informed and a majority respond affirmatively in writing. Any actions taken without a meeting shall be ratified when the Executive Council next meets in person.

At any meeting of the Executive Council seven members, including the President or a Vice-President and at least three Executive Councillors, shall constitute a quorum. All decisions shall be taken by a simple majority vote. The President or, in his absence, the senior Vice-President in attendance shall have a casting vote where the votes are otherwise equally divided.

## **PART V - INTERNATIONAL CONFERENCES**

### **Article 20**

#### **Composition and Voting**

The Comité Maritime International shall meet in International Conference upon dates and at places approved by the Assembly, for the purpose of discussing and adopting resolutions upon subjects on an agenda likewise approved by the Assembly.

The International Conference shall be composed of all Members of the Comité Maritime International and such Observers as are approved by the Executive Council.

Each Member Association which has the right to vote may be represented by ten delegates and the Titulary Members who are members of that Association. Each Consultative Member may be represented by three delegates. Each Observer may be represented by one delegate only.

Each Member Association present and entitled to vote shall have one vote in the International Conference; no other Member and no Officer of



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*Constitution*

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- j) de fixer les dates et lieux de ses propres réunions et, sous réserve de l'article 5, des réunions de l'Assemblée, ainsi que des séminaires et colloques convoqués par le Comité Maritime International;
- k) de proposer l'ordre du jour des réunions de l'Assemblée et des Conférences Internationales, et de fixer ses propres ordres du jour ainsi que ceux des Séminaires et Colloques convoqués par le Comité Maritime International;
- l) d'exécuter les décisions de l'Assemblée;
- m) de faire rapport à l'Assemblée sur le travail accompli et sur les initiatives adoptées.

Le Conseil exécutif peut créer ses propres comités et groupes de travail et leur déléguer telles parties de sa tâche qu'il juge convenables. Ces comités et groupes de travail feront rapport au seul Conseil exécutif.

**Article 19****Réunions et quorum**

Le Conseil exécutif se réunira au moins deux fois par an. Il peut se réunir par le biais de moyens électroniques. Mais une réunion en présence physique des Membres du Conseil exécutif se tiendra au moins une fois par an, sauf empêchement par des circonstances en dehors de la volonté du Conseil exécutif. Le Conseil exécutif peut toutefois, lorsque les circonstances l'exigent, prendre des décisions sans qu'une réunion ait été convoquée, pourvu que tous ses Membres aient été entièrement informés et qu'une majorité ait répondu affirmativement par écrit. Toute action prise sans réunion en présence physique des Membres du Conseil exécutif sera ratifiée à la prochaine réunion en présence des Membres du Conseil exécutif.

Lors de toute réunion du Conseil exécutif, celui-ci ne délibère valablement que si sept de ses Membres, comprenant le Président ou un Vice-Président et trois Conseillers exécutifs au moins, sont présents. Toute décision est prise à la majorité simple des votes émis. En cas de partage des voix, celle du Président ou, en son absence, celle du plus ancien Vice-Président présent, est prépondérante.

**5<sup>ème</sup> PARTIE - CONFÉRENCES INTERNATIONALES****Article 20****Composition et Votes**

Le Comité Maritime International se réunit en Conférence Internationale à des dates et lieux approuvés par l'Assemblée aux fins de délibérer et d'adopter des résolutions sur des sujets figurant à un ordre du jour également approuvé par l'Assemblée.

La Conférence Internationale est composée de tous les Membres du Comité Maritime International et d'observateurs dont la présence a été approuvée par le Conseil exécutif.

Chaque Association membre, ayant le droit de vote, peut se faire représenter par dix délégués et par les Membres titulaires, membres de leur Association. Chaque Membre consultatif peut se faire représenter par trois délégués. Chaque observateur peut se faire représenter par un délégué seulement.

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*Part I - Organization of the CMI*

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the Comité Maritime International shall have the right to vote in such capacity.

The right to vote cannot be delegated or exercised by proxy.

The resolutions of International Conferences shall be adopted by a simple majority of the Member Associations present, entitled to vote, and voting.

## **PART VI - FINANCE AND GOVERNING LAW**

### **Article 21**

#### **Arrears of Subscriptions**

A Member Association remaining in arrears of payment of its subscription for more than one year from the end of the calendar year for which the subscription is due shall be in default and shall not be entitled to vote until such default is cured.

Members liable to pay subscriptions and who remain in arrears of payment for two or more years from the end of the calendar year for which the subscription is due shall, unless the Executive Council decides otherwise, receive no publications or other rights and benefits of membership until such default is cured.

Failure to make full payment of subscriptions owed for three or more calendar years shall be sufficient cause for expulsion of the Member in default. A Member expelled by the Assembly solely for failure to make payment of subscriptions may be reinstated by vote of the Executive Council following payment of arrears, subject to ratification by the Assembly. The Assembly may authorise the President and/or Treasurer to negotiate the amount and payment of arrears with Members in default, subject to approval of any such agreement by the Executive Council.

Subscriptions received from a Member in default shall, unless otherwise provided in a negotiated and approved agreement, be applied to reduce arrears in chronological order, beginning with the earliest calendar year of default.

### **Article 22**

#### **Financial Matters and Liability**

The Administrator and the auditors shall receive compensation as determined by the Executive Council.

Members of the Executive Council and Chairmen of Standing Committees, Chairmen and Rapporteurs of International Sub-Committees and Working Groups, when travelling on behalf of the Comité Maritime International, shall be entitled to reimbursement of travelling expenses, as directed by the Executive Council.

The Executive Council may also authorise the reimbursement of other expenses incurred on behalf of the Comité Maritime International.

The Comité Maritime International shall not be liable for the acts or omissions of its Members. The liability of the Comité Maritime International shall be limited to its assets.

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Chaque Association membre présente et jouissant du droit de vote dispose d'une voix à la Conférence Internationale, à l'exclusion des autres Membres et à l'exclusion des Membres du Bureau du Comité Maritime International, en leur qualité de membre de ce Bureau.

Le droit de vote ne peut pas être délégué ni exercé par procuration.

Les résolutions des Conférences Internationales sont prises à la majorité simple des Associations membres présentes, jouissant du droit de vote et prenant part au vote.

## 6<sup>ème</sup> PARTIE - FINANCES

### Article 21

#### **Retards dans le paiement de Cotisations**

Une Association membre qui demeure en retard de paiement de ses cotisations pendant plus d'un an à compter de la fin de l'année civile pendant laquelle la cotisation est due est considérée en défaut et ne jouit pas du droit de vote jusqu'à ce qu'il ait été remédié au défaut de paiement.

Les membres redevables de cotisations et qui demeurent en retard de paiement pendant deux ans au moins à compter de la fin de l'année civile pendant laquelle la cotisation est due ne bénéficient plus, sauf décision contraire du Conseil exécutif, de l'envoi des publications ni des autres droits et avantages appartenant aux membres, jusqu'à ce qu'il ait été remédié au défaut de paiement.

Une carence dans le paiement des cotisations dues pour trois ans au moins constitue un motif suffisant pour l'exclusion d'un Membre. Lorsqu'un Membre a été exclu par l'Assemblée au motif d'une omission dans le paiement de ses cotisations, le Conseil exécutif peut voter sa réintégration en cas de paiement des arriérés et sous réserve de ratification par l'Assemblée. L'Assemblée peut donner pouvoir au Président et/ou au Trésorier de négocier le montant et le paiement des arriérés avec le Membre qui est en retard, sous réserve d'approbation par le Conseil exécutif.

Les cotisations reçues d'un membre en défaut sont, sauf accord contraire approuvé, imputées par ordre chronologique, en commençant par l'année civile la plus ancienne du défaut de paiement.

### Article 22

#### **Questions financières et responsabilités**

L'Administrateur et les réviseurs reçoivent une indemnisation fixée par le Conseil exécutif.

Les membres du Conseil exécutif et les Présidents des comités permanents, les Présidents et rapporteurs des commissions internationales et des groupes de travail ont droit au remboursement des frais de voyages accomplis pour le compte du Comité Maritime International, conformément aux instructions du Conseil exécutif.

Le Conseil exécutif peut également autoriser le remboursement d'autres frais exposés pour le compte du Comité Maritime International.

Le Comité Maritime International ne sera pas responsable des actes ou

**Article 23****Governing Law**

Any issue not resolved by reference to this Constitution shall be resolved by reference to Belgian law, including the Act of 25<sup>th</sup> October 1919 (*Moniteur belge* of 5<sup>th</sup> November 1919), as subsequently amended, granting juridical personality to international organizations dedicated to philanthropic, religious, scientific, artistic or pedagogic objects, and to other laws of Belgium as necessary.

**PART VII - ENTRY INTO FORCE AND DISSOLUTION****Article 24****Entry into Force <sup>(2)</sup>**

This Constitution shall enter into force on the tenth day following its publication in the *Moniteur belge*. The Comité Maritime International established in Antwerp in 1897 shall thereupon become an international organization pursuant to the law of 25<sup>th</sup> October 1919, whereby international organizations having a philanthropic, religious, scientific, artistic or pedagogic object are granted juridical personality (*Moniteur belge* 5 November 1919). Notwithstanding the later acquisition of juridical personality, the date of establishment of the Comité Maritime International for all purposes permitted by Belgian law shall remain 6<sup>th</sup> June 1897.

**Article 25****Dissolution and Procedure for Liquidation**

The Assembly may, upon written motion received by the Administrator not less than one-hundred eighty days prior to a regular or extraordinary meeting, vote to dissolve the Comité Maritime International. At such meeting a quorum of not less than one-half of the Member Associations entitled to vote shall be required in order to take a vote on the proposed dissolution. Dissolution shall require the affirmative vote of a three-fourths majority of all Member Associations present, entitled to vote, and voting. Upon a vote in favour of dissolution, liquidation shall take place in accordance with the law of Belgium. Following the discharge of all outstanding liabilities and the payment of all reasonable expenses of liquidation, the net assets of the Comité Maritime International, if any, shall devolve to the Comité Maritime International Charitable Trust, a registered charity established under the law of the United Kingdom.

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<sup>2</sup> Article 24 provided for the entry into force the tenth day following its publication in the *Moniteur belge*. However, a statutory provision which entered into force after the voting of the Constitution by the Assembly at Singapore and prior to the publication of the Constitution in the *Moniteur belge*, amended the date of acquisition of the juridical personality, and consequently the date of entry into force of the Constitution, which could not be later than the date of the acquisition of the juridical personality. Reference is made to footnote 1 at page 8.

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omissions de ses Membres. La responsabilité du Comité Maritime International est limité à ses avoirs.

**Article 23****Loi applicable**

Toute question non résolue par les présents statuts le sera par application du droit belge, notamment par la loi du 25 octobre 1919 (Moniteur belge 5 novembre 1919) accordant la personnalité civile aux associations internationales poursuivant un but philanthropique, religieux, scientifique, artistique ou pédagogique telle que modifiée ou complétée ultérieurement et, au besoin, par d'autres dispositions de droit belge.

**7<sup>ème</sup> PARTIE - ENTREE EN VIGUEUR ET DISSOLUTION****Article 24****Entrée en vigueur <sup>(2)</sup>**

Les présents statuts entrent en vigueur le dixième jour après leur publication au Moniteur belge. Le Comité Maritime International établi à Anvers en 1897 sera alors une Association au sens de la loi belge du 25 octobre 1919 accordant la personnalité civile aux associations internationales poursuivant un but philanthropique, religieux, scientifique, artistique ou pédagogique et aura alors la personnalité morale. Par les présents statuts les Membres prennent acte de la date de fondation du Comité Maritime International, comme association de fait, à savoir le 6 juin 1897.

**Article 25****Procédure de dissolution et de liquidation**

L'Assemblée peut, sur requête adressée à l'Administrateur au plus tard cent quatre vingt jours avant une réunion ordinaire ou extraordinaire, voter la dissolution du Comité Maritime International. La dissolution requiert un quorum de présences d'au moins la moitié des Associations Membres en droit de voter et une majorité de trois quarts de votes des Associations Membres présentes, en droit de voter, et votant. En cas de vote en faveur d'une dissolution, la liquidation aura lieu conformément au droit belge. Après l'apurement de toutes les dettes et le paiement de toute dépense raisonnable relative à la liquidation, le solde des avoirs du Comité Maritime International, s'il y en a, reviendront au Fonds de Charité du Comité Maritime International ("CMI Charitable Trust"), une personne morale selon le droit du Royaume Uni.

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<sup>2</sup> L'article 24 prévoyait l'entrée en vigueur le dixième jour suivant la publication des statuts au Moniteur belge. Toutefois, une disposition légale entrée en vigueur après le vote de la Constitution par l'Assemblée à Singapour et avant la publication des statuts, a modifié la date de l'acquisition de la personnalité morale, et ainsi la date de l'entrée en vigueur des statuts, qui ne pouvait être postérieure à la date de l'acquisition de la personnalité morale. Voir note 1 en bas de la page 9.

## **RULES OF PROCEDURE\***

1996<sup>1</sup>

### **Rule 1**

#### *Right of Presence*

In the Assembly, only Members of the CMI as defined in Article 3 (I) of the Constitution, members of the Executive Council as provided in Article 4 and Observers invited pursuant to Article 4 may be present as of right.

At International Conferences, only Members of the CMI as defined in Article 3 (I) of the Constitution (including non-delegate members of national Member Associations), Officers of the CMI as defined in Article 8 and Observers invited pursuant to Article 20 may be present as of right.

Observers may, however, be excluded during consideration of certain items of the agenda if the President so determines.

All other persons must seek the leave of the President in order to attend any part of the proceedings .

### **Rule 2**

#### *Right of Voice*

Only Members of the CMI as defined in Article 3 (I) of the Constitution and members of the Executive Council may speak as of right; all others must seek the leave of the President before speaking. In the case of a Member Association, only a listed delegate may speak for that Member; with the leave of the President such delegate may yield the floor to another member of that Member Association for the purpose of addressing a particular and specified matter.

### **Rule 3**

#### *Points of Order*

During the debate of any proposal or motion any Member or Officer of the CMI having the right of voice under Rule 2 may rise to a point of order and the point of order shall immediately be ruled upon by the President. No one rising to a point of order shall speak on the substance of the matter under discussion.

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1. Adopted in Brussels, 13<sup>th</sup> April 1996.

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*Rules of Procedure*

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All rulings of the President on matters of procedure shall be final unless immediately appealed and overruled by motion duly made, seconded and carried.

#### Rule 4

##### *Voting*

For the purpose of application of Article 6 of the Constitution, the phrase “Member Associations present, entitled to vote, and voting” shall mean Member Associations whose right to vote has not been suspended pursuant to Articles 7 or 21, whose voting delegate is present at the time the vote is taken, and whose delegate casts an affirmative or negative vote. Member Associations abstaining from voting or casting an invalid vote shall be considered as not voting.

Voting shall normally be by show of hands. However, the President may order or any Member Association present and entitled to vote may request a roll-call vote, which shall be taken in the alphabetical order of the names of the Member Associations as listed in the current CMI *Yearbook*.

If a vote is equally divided the proposal or motion shall be deemed rejected.

Notwithstanding the foregoing, all contested elections of Officers shall be decided by a secret written ballot in each category. Four ballots shall be taken if necessary. If the vote is equally divided on the fourth ballot, the election shall be decided by drawing lots.

If no nominations for an office are made in addition to the proposal of the Nominating Committee pursuant to Article 15, then the candidate(s) so proposed may be declared by the President to be elected to that office by acclamation.

#### Rule 5

##### *Amendments to Proposals*

An amendment shall be voted upon before the proposal to which it relates is put to the vote, and if the amendment is carried the proposal shall then be voted upon in its amended form.

If two or more amendments are moved to a proposal, the first vote shall be taken on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all amendments have been put to the vote.

#### Rule 6

##### *Secretary and Minutes*

The Secretary-General or, in his absence, an Officer of the CMI appointed by the President, shall act as secretary and shall take note of the proceedings and prepare the minutes of the meeting. Minutes of the

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*Part I - Organization of the CMI*

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Assembly shall be published in the two official languages of the CMI, English and French, either in the *CMI Newsletter* or otherwise distributed in writing to the Member Associations.

#### Rule 7

##### *Amendment of these Rules*

Amendments to these Rules of Procedure may be adopted by the Assembly. Proposed amendments must be in writing and circulated to all Member Associations not less than 60 days before the annual meeting of the Assembly at which the proposed amendments will be considered.

#### Rule 8

##### *Application and Prevailing Authority*

These Rules shall apply not only to meetings of the Assembly and International Conferences, but shall also constitute, *mutatis mutandis*, the Rules of Procedure for meetings of the Executive Council, International Sub-Committees, or any other group convened by the CMI.

In the event of an apparent conflict between any of these Rules and any provision of the Constitution, the Constitutional provision shall prevail in accordance with Article 7(h). Any amendment to the Constitution having an effect upon the matters covered by these Rules shall be deemed as necessary to have amended these Rules *mutatis mutandis*, pending formal amendment of the Rules of Procedure in accordance with Rule 7.



## **GUIDELINES FOR PROPOSING THE ELECTION OF TITULARY AND PROVISIONAL MEMBERS**

1999<sup>1</sup>

### *Titulary Members*

No person shall be proposed for election as a Titulary Member of the Comité Maritime International without supporting documentation establishing in detail the qualifications of the candidate in accordance with Article 3 (I)(c) of the Constitution. The Administrator shall receive any proposals for Titulary Membership, with such documentation, not less than sixty (60) days prior to the meeting of the Assembly at which the proposal is to be considered.

Contributions to the work of the Comité may include active participation as a voting Delegate to two or more International Conferences or Assemblies of the CMI, service on a CMI Working Group or International Sub-Committee, delivery of a paper at a seminar or colloquium conducted by the CMI, or other comparable activity which has made a direct contribution to the CMI's work. Services rendered in furtherance of international uniformity may include those rendered primarily in or to another international organization, or published writing that tends to promote uniformity of maritime law or related commercial practice. Services otherwise rendered to or work within a Member Association must be clearly shown to have made a significant contribution to work undertaken by the Comité or to furtherance of international uniformity of maritime law or related commercial practice.

### *Provisional Members*

Candidates for Provisional Membership must not merely express an interest in the object of the CMI, but must have *demonstrated* such interest by relevant published writings, by activity promoting uniformity of maritime law and/or related commercial practice, or by presenting a plan for the organization and establishment of a new Member Association.

### *Periodic Review*

Every three years, not less than sixty (60) days prior to the meeting of the Assembly, each Provisional Member shall be required to submit a concise report to the Secretary-General of the CMI concerning the activities organized or undertaken by that Provisional Member during the reporting period in pursuance of the object of the Comité Maritime International.

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1. Adopted in New York, 8<sup>th</sup> May 1999, pursuant to Article 3 (I)(c) and (d) of the Constitution.

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*Headquarters and Officers*


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<sup>2</sup> Born 1944 in Västerås, Sweden. 1971: Bachelor of law, University of Uppsala, Sweden. 1971-1972: Lecturer, School of Economics, Gothenburg, Sweden. 1972: Associate, Mannheimer & Zetterlöf, Gothenburg, Sweden. 1973-1976: Legal officer, United Nations Commission on International Trade Law, United Nations Conference on Trade and Development, Geneva, Switzerland. 1977-1981: Research

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Law, United Nations Conference on Trade and Development, Geneva, Switzerland. 1977-1981: Research fellow, Scandinavian Institute of Maritime Law, Oslo, Norway. 1982-2010: Attorney at law, Northern Shipowners Defence Club, Oslo, Norway. 2012: Partner, Arntzen de Besche, Oslo, Norway. 1993-2000: President, Norwegian Maritime Law Association, Oslo, Norway. 1994: Executive Councillor, Comité Maritime International, Antwerp, Belgium. 1996: Chairman of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and related subjects. 1998: Mediation Workshop, arranged by Professor Frank E.A. Sander, Harvard Law School. 1999: President of the Main Committee of the Diplomatic Conference on Arrest of Ships. 2001: Vice President, Comité Maritime International, Antwerp. Delegate of Norway to several IMO, UNCTAD and UNCITRAL meetings. Participated in the drafting of several BIMCO documents, such as BARECON 2001.

<sup>3</sup> Advocate to the Supreme Court of Cassation, Partner Berlingieri Maresca Studio Legale Associato, Titulary Member CMI, President Italian MLA, Vice President for Italy of IIDM, deputy editor of *Il Diritto Marittimo*, member of the Contributory Board of *Droit Maritime Français*.

<sup>4</sup> Born 24 January 1956 in Santiago, Chile. Tulane University School of Law, *Juris Doctor, cum laude*, 1979; University of Virginia, Bachelor of Arts, with distinction, 1976; Canal Zone College, Associate of Arts, with honors, 1974. Admitted to practice in 1979 and is a shareholder in the New Orleans office of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC and currently represents maritime, energy and insurance clients in litigation and arbitration matters. He has lectured and presented papers at professional seminars sponsored by various bar associations, shipowners, and marine and energy underwriters in Asia, Latin America and the United States. He is a member of the Advisory Board of the Tulane Maritime Law Journal, the New Orleans Board of Trade, and a former member of the Board of Directors of the Maritime Law Association of the United States. He became a Titulary Member of the CMI in 2000 and a member of the Executive Council in 2005.

<sup>5</sup> BComm LLB (Cape) LLM (Lond) LLD (Cape) *Professor Emeritus* in Shipping Law, Born 1947 in Cape Town. Attorney and Notary Public of the Republic of South Africa – admitted 1975 and practised shipping law full time in Cape Town for 20 years. Convenor of graduate teaching of shipping law at the University of Cape Town for 25 years teaching Maritime Law, Carriage of Goods, Admiralty Jurisdiction & Practice, and Marine Insurance to a cosmopolitan class. Retired from full-time UCT teaching post end-2012, and elected *Professor Emeritus* of Shipping Law by the Senate of the University in December 2012. Author of *Shipping Law & Admiralty Jurisdiction in South Africa* (2<sup>nd</sup> Ed) Juta, 2009 (1000pg) and numerous journal articles on shipping law and marine insurance. Holder of a Diploma in the Science and Technology of Navigation, Sir John Cass College, London 1973. Associate Fellow of the Nautical Institute and Honorary Member of The Society of Master Mariners of South Africa. Holder of a 100 ton motor vessel skipper's ticket. Past Councillor and President of the South African Maritime Law Association, and two-term Executive Council member of the Comité Maritime International. Appointed Secretary-General of the CMI in October 2013.

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*Administrator:***Lawrence TEH** (2013)<sup>6</sup>

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<sup>6</sup> Lawrence Teh is a partner in Rodyk & Davidson LLP's Litigation & Arbitration Practice Group. Lawrence advises clients and acts as an advocate in all areas of commercial law and appears regularly as leading counsel in the Singapore Courts, and in arbitration and in other forms of dispute resolution. He has particular experience in maritime and aviation, international trade and commodities, banking and financial services, onshore and offshore construction, mergers acquisitions joint ventures and other investments, and insurance in related fields. He is a Fellow of the Chartered Institute of Arbitrators, a Fellow of the Singapore Institute of Arbitrators, a panel arbitrator at the Singapore International Arbitration Centre, and a member of the Maritime Law Association of Singapore. He chaired the committee that drafted the Law Society Arbitration Rules and is panel arbitrator of the Law Society Arbitration Scheme. He is named in the Asia Pacific Legal 500 for Dispute Resolution and in the International Who's Who for Commercial Litigation. He is also named in International Who's Who of Shipping & Maritime, and has been an Asialaw Leading Lawyer since 2006 for Shipping, Maritime & Aviation and on the Guide to the World's Leading Aviation Lawyers.

<sup>7</sup> Peter Verstuyft (1948) graduated in Applied Economics from the University of Antwerp (UFSIA) in 1970 and obtained a master's degree in Financial Management at the Flemish Institute for Economics (VLEKHO) in 1976. He obtained a postgraduate in Managing Ship Production at the West European Graduate Education in Marine Technology (University of Strathclyde) in 1980 and in International Fiscal Law at the University of Antwerp in 1999. He started his professional career in 1972 with the Boelwerf shipyard where, in 1980 was promoted to Financial Manager. From 1985 to 1992, Peter Verstuyft was the Managing Director of Boelwerf with overall responsibility for a shipyard with about 2.500 employees and building seagoing vessels up to 150.000 DWT. Between 1993 and 1996, Peter Verstuyft was a member of the management of URS, a group of companies performing towage on the river Scheldt in Belgium and the Netherlands, salvage at sea and off-shore support services. From 1997 to 1999 he was Chief Financial Officer of AMI, a network of about 30 forwarding companies situated in Europe, Middle East and mainly Africa. Mid 2003 he was appointed as Secretary General of EXMAR, the industrial maritime group to which EXMAR Shipmanagement belongs, a company offering crewing services and technical management to seagoing vessels, of which he was Managing Director until end 2008. Beginning 2009 Peter Verstuyft became Managing Director of the Royal Belgian Shipowners' Association, from which he retired on August, 31<sup>st</sup> 2015. He is Chairman of the Board of the Antwerp dockpilots company BRABO. Furthermore, Peter Verstuyft is Member of the Board of ANKERWIJS, holding a group of 6 primary schools in Antwerp, totalling 2100 pupils, and he was a Member of the Board of the HR services group of companies ACERTA from 2001 till 2013, being Chairman the last six years.

<sup>8</sup> Ann Fenech graduated from the University of Malta in 1986. She obtained her Masters degree in maritime law from the University of London in 1989. She is the Managing Partner and Head of the Marine Litigation Department of Fenech & Fenech Advocates - Malta. In 1986 she joined Holman Fenwick and Willan in London until 1991 when she moved to the New Orleans firm Chaffie, McCall. In 1992 she joined Fenech & Fenech Advocates Malta and set up the Marine Litigation Department. She deals with a cross section of marine related disputes ranging from collisions to ship building contracts.

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She has assisted in the drafting of a number of maritime related laws in Malta and lectures extensively on the subject in Malta and abroad; she was the Chairman of the Pilotage Board from 2000 up to 2010, she is the President of the Malta Maritime Law Association, a Council Member of the European Maritime Law Organisation and in June 2012 she was awarded Best in Shipping Law at the European Women in Business Awards held in London. In March 2012 she was appointed Director on Premier Capital plc and in December 2012 she was appointed Director of Bank of Valletta plc. She is also a founding committee member of the Malta Maritime Forum. In October 2013 she was appointed as an Honorary Patron sitting on the Board of Advisers of the Malta Law Academy, a foundation of Advocates in Malta. She was awarded Best in Shipping Law at the European Women in Business Awards in 2012, 2014 and 2015.

<sup>9</sup> Born 27 July 1964. Tomotaka Fujita is Professor of Law at Graduate Schools for Law and Politics, University of Tokyo (2004). LLB, University of Tokyo (1988); Research Assistant at University of Tokyo (1988-1991); Lecturer and Associate Professor of Law at Seikei University (1991-1998); Associate Professor of Law at Graduate Schools for Law and Politics, University of Tokyo (1998-2004). Professor Fujita is the Secretary General and a Director of Japanese Maritime Law Association, Titularly Member of CMI, Chairman of CMI's International Working Group on Rotterdam Rules. He was the Japanese Delegation to UNCITRAL, IMO and IOPC Fund. He was a Vice Chairman of the UNCITRAL 41st Session (2008) and First Vice Chairman of the 1992 IOPC Fund Assembly (2010). Author (with Michael Sturley and Gertjan van der Ziel) of *The Rotterdam Rules: The UN Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea*.

<sup>10</sup> Luc Grellet commenced his career with Richards Butler in London in 1974. He then worked in Paris with the law firm Warot-Lassez for two years and Siméon Moquet Borde for one year. He joined Courtois Bouloy Lebel at the end of 1977 where he was made partner at the age of 31 in 1980. He founded his firm with Pierre Bouloy in 1991 and joined Reed Smith in September 2008. His practice includes all aspects of shipping and transports law, offshore, sale and purchase, construction, classification societies and related insurance issues. He has developed a particular expertise in major disasters, pollution and arbitration. He is: Titulary member of the CMI; Vice-President of the French Maritime Law Association; President of the Offshore Commission of the French MLA; Member of the French Committee of Arbitration and of the IAI.

<sup>11</sup> He is a lawyer graduated from the School of Law and Social Sciences of the University of Buenos Aires in 1978. He was its Standard-bearer and he was also granted the GOLD MEDAL of the School of Law and Social Sciences of the University of Buenos Aires as Outstanding Graduate. He was Secretary-General of the Argentine MLA, is Member of its ExCo and is Director of the Editing Committee of the Revista de Estudios Marítimos (Magazine of Maritime Studies), Vice-President for

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<sup>12</sup> Dieter Schwampe, born 1957. Studied law and japanology in Konstanz, Bonn and Hamburg. Law doctorate 1985 with a thesis on “Charterers’ Liability Insurance”. Professor of law at Hamburg University since 2013. Admitted to the German bar 1985. Joined the Hamburg law firm Dabelstein & Passehl in 1985, Partner since 1988, Managing Partner from 2000 until 2013. President of the German Maritime Law Association (DVIS). Member of the Executive Council of the Hamburg Association of Insurance Science. Member of the Executive Committee of the Transport and Forwarding Law Committee of the German Lawyers Association (2008-2010). Chairman of the International Working Group on Marine Insurance of the CMI (2008 to 2013). Vice Chairman of the Working Party on Marine Insurance of the Association Internationale de Droit des Assurance (AIDA). Member of the Legal and Liability Committee of the International Union of Marine Insurers (IUMI). Active Arbitrator and Member of the German Maritime Arbitration Association (GMAA). Awarded one of “World’s Top 30 Lawyers” in the area of Shipping Law (Expert Guides 2013, Best of the Best) and one of the “Best Lawyers in Germany” in the areas of insurance, shipping and transport (Best Lawyers/Handelsblatt 2013). Recommended Lawyer in the Legal 500. “Leading Individual” in Chamber Europe 2015 in the area “Transportation: Shipping: Litigation”. Client Choice Award in the section “Insurance and Reinsurance” 2015. Regular speaker at conferences and seminars and author of many articles and books. Special areas of practice: shipping law, marine insurance law.

<sup>13</sup> Mr. O’Connor is a full member of the bars of Ontario and Quebec. In addition to undergraduate studies at York University and the University of Toronto, he holds a degree in Common Law from the University of Ottawa and a degree in Civil Law from Laval University. He also holds a masters degree in law from Laval University. He is a senior partner in the Langlois firm and has practised in both Montreal and Quebec City virtually all aspects of admiralty and maritime law. He is a past president of the Canadian Maritime Law Association and a Titulary Member of CMI. He has given evidence on several Parliamentary Bills concerning maritime law before federal and provincial parliamentary committees. He has taught maritime law at McGill University for many years and is the author of several articles on various subjects of maritime law.

<sup>14</sup> Born in 1965 in The Hague, The Netherlands. Read law at Leiden University (LL.M 1989). Advocaat at the Rotterdam Bar since 1990, having joined NautaDutilh. Joined AKD in 2001. President

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<sup>15</sup> Born on 17 August 1957. Graduated from the University of Zurich School of Law, 1981, Master of Laws in Admiralty, Tulane University, New Orleans, 1984. Admitted to the bar in Switzerland, 1988. Doctor degree 1989 and Habilitation 1999. Partner at Schellenberg Wittmer Ltd. in Zurich in 1993 and head of the firm's Trade and Transport and of the Insurance Practice Groups. Specialization in all aspects of trade and transportation law, including maritime and aviation law, insurance and re-insurance law. Since 1990 lecturer at the University of Zurich (1999 Associate Professor and 2005 Professor for International Trade Law). General Secretary of the International Union of Marine Insurance (1992-1997) and Secretary General to the CMI (1996- 2003). President of the Swiss Maritime Law Association, President of the Swiss Transport Commission (TRT) as well as board member of the Swiss Shippers Council (SSC), of the Swiss (ASDA) and of the European Aviation Law Association (EALA). Member of the CMI and later of the Swiss delegation at UNCITRAL tasked with creating a new Transport Convention (Rotterdam Rules). He has authored numerous publications in his fields of specialization.

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*Standing Committees*


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[As constituted during EXCO eMeeting Nov 2016]

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[As constituted November 2016]

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## PART II

# **The Work of the CMI**



**NEW YORK CONFERENCE  
3-6 MAY 2016**

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## OPENING SPEECH

ROBERT CLYNE

CMI Delegates and Accompanying Persons, Members of the U.S. MLA, Distinguished Guests, Ladies & Gentlemen,

My name is Robert Clyne and I am the President of the Maritime Law Association of the United States. It is a real honor for the U.S. MLA to host the 42<sup>nd</sup> Conference of the Comité Maritime International. I want to take this opportunity to wish you a warm welcome to New York and to the opening of this historic conference. Due to the herculean efforts of the CMI Secretary General, John Hare, and the Chairman of the CMI 2016 Arrangements Committee, Vince Foley, as well as the Chairs of the CMI Working Groups and the MLA Committees an extraordinary program has been developed for this week.

This CMI conference is unique in the annals of CMI conferences insofar as it is really a joint meeting of the CMI and our association which comprises some 2800 members.

As you may know, the U.S. MLA was formed in 1899 in large part to be a constituent member of the CMI – just 2 short years after the CMI itself was formed. The moving force behind the establishment of our MLA was Robert Dewey Benedict of the New York Admiralty Bar and, indeed, he was the first President of our Association. The history of the early days of our Association and its participation in CMI Conferences is more than interesting and it involved some very active participation of the members of our judiciary including the Honorable Addison Brown of the U.S. District Court for the Southern District of New York.

The Brussels Diplomatic Conference on Maritime Law in 1910 which adopted International Conventions on Collision and Salvage saw the U.S. delegation led by Charles Burlingham.

Of course, a major undertaking for the CMI over the next few decades was the development and adoption of the Hague Rules and the Visby Amendments and the MLA U.S. played an active role in that work.

The last time that the CMI held a conference in the United States was in 1965. That conference was held here in New York as well. Nick Healy was president of the MLA U.S. and Ben Yancey was 2<sup>nd</sup> Vice President. We had a robust CMI Committee within our Association that included the likes of Charles Haight, Herbert Lord, Marshall Keating, and John Sims.

One of the keynote speakers introduced by President Healy was John



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*Opening Speech, by Robert Clyne*

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Marshall Harlan – who was Associate Justice of the Supreme Court. In his remarks Justice Harlan had this to say about the CMI:

“You operate, not in the realm of political platitudes, but in the context of immediate and concrete interests. You are content to proceed step by step in the achievement of your broader ideals, and you work in a field which has behind it the ancient traditions of the law of the sea, and in whose development, international cooperation and understanding you have long played a major role.

A record stretching back more than half a century attests to the soundness of your approach and reflects your continuing visible achievements. And that in turn promises the hope that the procedures that have been found so fruitful in your endeavors will also be found to be a useful part in other quite different realms.”

As the CMI seeks to reinvent itself and find its place in today’s world, I think we need to take those words to heart. There remains a role – an important role – for the CMI in the development and harmonization of international maritime law.

And one cannot talk about the work of the CMI without Frank Wiswall being included in the conversation. Frank’s contributions to the CMI are too numerous to recount and his dedicated service to both the CMI and the MLA cannot easily be described. I am so very grateful that Frank & Libby could be with us this evening and for the events to come this week.

And so as I think about all of these stalwart predecessors and those words by Justice Harlan that I just quoted, one person comes to mind. Tonight, we remember Michael Marks Cohen and all of his accomplishments to both the CMI and the U.S. MLA. Michael believed that bar association work was so important and he more than most, “walked the talk” in supporting and participating in the activities of both associations. We miss his deft intellect and his wise counsel – and we are grateful that his wife Bette could be here with us this evening.

I hope that you find the week’s sessions to be informative, productive and useful. As I mentioned earlier, it is a unique program and we have some unique events for the delegates. The Healy Lecture on Thursday evening on the campus of NYU in Greenwich Village is a “can’t miss” event. Also, our Annual Meeting will take place on Friday morning in the Great Hall of the Association of the Bar of the City of New York on 44<sup>th</sup> Street. It’s an opportunity for the delegates to gain some insight into the activities of our Association.

As a final comment, I would like to thank our CMI Arrangements Committee led by Vince Foley for all of their work – and it is a lot of work – in putting on this conference. I also owe a debt of gratitude to our sponsors. They really came through for us and we so appreciate their financial support.

It is now my great pleasure to introduce the President of the CMI – Mr. Stuart Hetherington.

## OPENING SPEECH

STUART HETHERINGTON\*

Secretary-General Kitack Lim, Bob Clyne, your Honours, Jose Modesto Apolo, President of Ecuador MLA and IIDM, John Witte, President of the ISU, Rear Admiral Steve Poulin, Admiral Papp, Kofi Mbiah, Fred Kenney, distinguished guests, ladies and gentlemen.

Welcome to the 42<sup>nd</sup> CMI Conference. We are indeed honoured to have the Secretary-General today to open this historic joint meeting of a CMI Conference and the MLAUS Spring Meeting. I will introduce him in more detail later.

I would like to make special mention of some people in the audience, because they are, or they are connected to, MLAUS members who have been heroes of mine.

*Peggy Healy*

I am delighted that Peggy Healy could be with us. Peggy is the daughter of Nick Healy, who was President of the MLAUS when CMI had that last meeting in New York in 1965. Her father and her mother, Margaret were regular attendees at CMI meetings over many years. We will of course be honouring Nic Healy again on Thursday evening at NYU. Peggy blames the 1965 Conference for opening her eyes to a career in event management. Her nephew Kevin White has been of enormous assistance in the organisation of this meeting.

*Betty Marks-Cohen*

I am also delighted to welcome Betty Marks-Cohen here. It is hard to imagine a CMI event taking place in New York without her late husband Michael being involved and organising dinners and entertainments for numerous of the delegates. Michael was another great American lawyer who was a member of the CMI family.

*Frank Wiswall*

It is great to have Frank Wiswall and Libby amongst us. I will have more to say about Frank later.

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\* President of CMI.

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*Opening Speech, by Stuart Hetherington*

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*IMLI Prize*

I should also welcome Harry Kazantzis, the IMLI Prize winner, who is the student guest of the CMI and the Charitable Trust at this Conference.

*Pat Bonner, Bob Parrish and Bob Clyne*

I would also like to make special mention of Bob Clyne's two predecessors as Presidents of the MLAUS: Pat Bonner and Bob Parrish, without whose support and foresight this Conference would not be taking place. At a meeting of the MLAUS Organising Committee in Bermuda last year, Bob Parrish, referred to each of their periods in office in connection with this Conference by analogy to trimesters in the birthing process. I would prefer to use sporting metaphors and suggest that it was Pat Bonner who started the ball rolling, when he wrote to Karl Gombrii on March 9, 2012 inviting CMI to hold its Conference this year in New York; Bob Parrish who carried the ball through the middle of the field of play and laid on a great pass to Bob Clyne who guided the ball in to the goal, where we are today. I thank each of them for all their assistance in getting this meeting to where we are today.

As you have heard-This is the first CMI Conference to take place in the United States since 1965. That was itself the first conference which the CMI had held outside Europe (68 years after its founding). That was CMI's 21st Conference.

*1965*

In 1965 they had a simple agenda at the Conference. It read "Revision of the International Convention for the unification of certain rules relating to maritime liens and mortgages, signed at Brussels on April 10th 1926". I was pleased to see in the discussions which took place in New York that there had been two drafts of the Convention which had been prepared in the lead up to the Conference. One was called the "Oxford Draft" and the other the "Portofino Draft". I suspect that Messrs Birch Reynardson and Berlingieri (the fathers) may have had something to do with that.

The CMI Secretary-General had an easier task in 1965 designing the program for the meeting. How much simpler life was then. The business sessions started at 9.30am and there were two hour lunch breaks on each of Monday, Tuesday, Thursday and Friday. The CMI Constitution which was incorporated in the Conference booklet had eight substantive articles, the ninth listing the officers of the Bureau Permanent, as it was then known. (We now have 25 articles). There were 28 MLA country members and we now have in excess of 50.

*Justice Harlan*

I recently read the minutes of the opening session of the 1965 Conference at Carnegie Hall on Sunday, 12 September. In his opening words of welcome

Nick Healy welcomed the delegates and made special reference to Mr Justice Harlan. To those of you who are not familiar with American jurisprudence, you may not be aware of the significance of that name. Justice Harlan II, as I will refer to him, was an Associate Justice of the Supreme Court of the United States from 1955 to 1971. He formally opened the Conference. I want to refer to his grandfather John Marshall Harlan. He also was a Justice of the United States Supreme Court and was described by his fellow Justice Oliver Wendell Holmes as the last “tobacco chomping justice”. When I tell you more about him you will understand why he also joined my list of heroes from the American judicial system. Apparently, not only did he chew tobacco but he also drank bourbon, played golf, loved baseball and wore colourful clothing.

My wife will confirm, if she was here, that if you replace bourbon with whisky and baseball with cricket, Justice Harlan and I would have had much in common, as she is frequently heard to criticise the clothing that I choose to wear at weekends.

All those attributes would be sufficient for my purposes to add him to the list of people I would want to invite to a dinner party of the immortals. However, he is much more significant a character than those particular foibles disclosed. He is best known for his famous dissent in *Plessy v Ferguson* in 1896 when the majority of the Supreme Court upheld a Louisiana law requiring blacks and whites to ride in separate railroad cars. Harlan criticised the court’s adoption of the “separate but equal” doctrine in saying “Our constitution is colour blind, and neither knows nor tolerates classes amongst citizens”.

### *The Programme*

Whilst the times have changed, the *raison d’être* of the CMI remains, namely to bring as much uniformity to the practice of maritime law as we can. That should be at the forefront of our minds during all the sessions that are conducted over the next two days, especially the Revision of the York Antwerp Rules. As I have said in the correspondence sent to MLA Presidents there is no point amending those Rules if the parties who are going to use them do not support them unanimously. I will not belabour that point further except to urge upon you extreme caution in the negotiations and discussions that take place. I take my hat off to Bent Nielsen and his Rapporteurs Taco van Der Valk and Richard Cornah for their efforts to bring the different commercial interests together and hope that we can announce a new version of the York Antwerp Rules (2016) on Friday afternoon at the Assembly. Thanks go to my predecessor Karl Gombrii for kick starting this work in 2012.

It is invidious to single out particular topics that are going to entertain us this week but I am going to do so. I am particularly looking forward to hearing Nick Sloane address us tomorrow on what it took to raise the “Costa Concordia”-those of you who heard him at the Colloquium in Argentina a few

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*Opening Speech, by Stuart Hetherington*

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years ago know that you are in for treat. Similarly those of you, who witnessed the Polar Shipping sessions 4 years ago in Beijing, know that this increasingly complex topic has much to offer, under Aldo Chircop's and Phillip Buhler's expert guidance.

We will also be considering various aspects of more traditional topics such as carriage of goods, marine insurance, arbitration (where we will be celebrating the great success of the New York Convention), ship finance and cross-border insolvency, all of which throw up legal problems in our every day practices.

It is fitting that the Secretary-General of the IMO should be here in the year when the IMO should have as its slogan: "Shipping Indispensable to the World" – a sentiment with which I am sure we would all agree. The CMI, thanks in some cases to referrals from Fred Kenney at the IMO Legal Committee, has taken on a number of new and fascinating topics in the last twelve months. They include the issues that have come to the fore in the Mediterranean arising from Migration at Sea and you will have the opportunity to hear from one of the world's renowned experts on International maritime law Professor Craig Allen of Washington University. Another new issue that CMI has taken up at the suggestion of the IMO is "Pandemic Response", occasioned by the Ebola virus problems of last year.

In addition the regulatory challenges faced by Cybersecurity is to be discussed and you will hear from writer Peter Singer and Michael Riley, Bloomberg journalist on the Port of Antwerp hacking. Finally I want to mention the topic of Unmanned Craft where you will hear from Oskar Levander, of Rolls Royce, which is at the forefront of the innovative technology which is likely to lead to unmanned ships operating in international waters alongside traditionally manned shipping, thereby creating challenges for regulators and classification societies. It is 60 years since the container revolution started. In another 60 years I wonder if our successors will be querulous as to why we needed to spend time in 2016 discussing this topic.

The CMI Secretary-General, the Chairs of International Working Groups and the Chairs of the MLAUS Committees have gone to great lengths to identify the topics for discussion during the next two days. For those of you who are used to attending the Spring meeting of the MLAUS and running around town to different offices to attend various Committee meetings, I hope you all find that this format whereby the great majority of Committee meetings are taking place within the confines of this hotel will facilitate both the number of meetings you are able to attend and also the making of friendships and networking that will be facilitated by attendance at the social functions, including tea and coffee breaks and lunch breaks.

Without the Chairs and Rapporteurs of the CMI IWGs, the Chairs of the MLAUS Committees and all those of you who have prepared papers, this Conference would not be the success it is going to be. Thank you all.

I am also extremely grateful to Bob Clyne, Vince Foley and all the members of the MLAUS Organising Committee, especially John Kimball who organises the Nick Healy memorial lecture and has had a key role in obtaining the sponsorship that has made this Conference and meeting possible.

#### *Sponsors*

That leads me to thank all those sponsors who have generously contributed to the expenses that are inevitably incurred in organising such a large event as this. I thank you all for your generosity. Our thanks go to all John Kimball's team, including Carleen Lyden-Kluss, who by a delightful coincidence the Secretary-General of the IMO will be pleased to know is an IMO Ambassador, who arranged the sponsorship.

#### *Event Manager*

I would also like to thank the event manager Kathy and her team at GM Travel for all their hard work in organising this meeting.

#### *Introduction of the following speakers*

That concludes the welcoming remarks which I wish to make and I shall now introduce the two speakers who will follow me in turn.

#### *The Secretary-General*

Kitack Lim was elected Secretary-General of the IMO by the 114th Session of the IMO Council in June last year for a four year period that started on 1 January this year. Kitack Lim comes from the Republic of Korea and is the 8th elected Secretary-General of the IMO. He was born in Masan, one of the major port cities in the Republic of Korea. He majored in nautical science at the Korea Maritime and Ocean University, Busan. He served on ships both as a Korean naval officer and for Sanko Shipping Company. He joined the Korean Maritime Port Administration in 1985. He studied at the World Maritime University. He first attended IMO meetings as part of the Republic of Korea's delegation in 1986. He was elected Chairman of the Tokyo Memorandum on Port State Control in 2004. In 2006 he was appointed as maritime attaché, minister councillor at the Embassy of the Republic of Korea in London and led all IMO work for the Republic of Korea, serving as Deputy Permanent Representative to IMO after August 2009. He was then appointed Director-General for Maritime Safety Policy Bureau at the headquarters of the Ministry of Land, Transport and Maritime Affairs and led the delegation of the Republic of Korea to the IMO Assembly in 2009. In July 2012 he became President of Busan Port Authority.

Before inviting Mr Lim to give the keynote address, I would like to introduce Frank Wiswall who will express our thanks to the Secretary-General.

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*Opening Speech, by Stuart Hetherington*

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*Frank Wiswall*

I have already mentioned Frank Wiswall. He has kindly agreed to thank our guest speaker and I am delighted to introduce him to you. By a strange quirk of fate, I succeeded Frank as a Vice-President of the CMI when he stepped down. (He is of course a Vice President Honoris Causa of the CMI.) At that time I recall saying that his were “very large boots to fill”, both literally and metaphorically. In 2005 Frank was presented with a certificate by the MLAUS recognising his service to both the MLA and CMI. Tom Rue was the then President of the MLA who made that presentation. Frank’s contributions to the maritime legal world are almost too great to mention here but briefly he has starred as an academic (obtaining his PHD from Cambridge University in England), as a lecturer at IMLI, WMU, Tulane and many other institutions, as an editor of leading publications, as a legal practitioner, as an adviser to a flag state, as the Chair and Vice-Chair of the IMO Legal Committee, as a Chair of International Conferences for Maritime Legal Conventions, as a Vice-President and Executive Councillor of the CMI, as the Chair of International Sub-Committees and International Working Groups of the CMI... the list goes on.

I would now like to invite the Secretary-General to open the Conference.

## OPENING SPEECH

KITACK LIM\*

Ladies and gentlemen,

I am delighted to be here this evening at the opening of not just the forty-second CMI conference but also a historic joint meeting between the specialist committees of the CMI and the Maritime Law Association of the United States.

In particular, I would like to thank CMI President Stuart Hetherington and CMI Secretary-General John Hare who, along with Bob Clyne, President of the Maritime Law Association of the United States, are responsible for making this landmark event a reality.

I have to say it is somewhat daunting to be in a room packed with so many lawyers. I am going to have to be very careful with what I say.

So I thought I would break the ice by finding a good joke about lawyers, but Admiral Kenney here advised me there's no such thing as a good lawyer joke – because lawyers don't think they're funny and other people don't think they're jokes!

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On a more serious note, let me begin by reflecting for a moment on the association between IMO and CMI. There is no doubt that both organizations have been strengthened by a history of cooperation that is both long and deep.

No one would dispute that IMO is now a well-established institution. Indeed, as we approach the sixtieth anniversary of becoming operational, some might even call us venerable. Yet, as historians among you will know, CMI pre-dates IMO as an international body concerned with maritime law by some considerable time, having been formed in the latter part of the nineteenth century.

The close relationship between the CMI and IMO can be traced back to the “*Torrey Canyon*” disaster of 1967, when the oil tanker of that name ran aground in the English Channel. The maritime world realised that no one quite knew how to deal with the legal issues that arose from the oil spill, clean up and subsequent demand for compensation that the incident provoked.

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\* Secretary-General, International Maritime Organization.



The CMI established an international committee to study the liability problem arising out of the incident. And, at the same time, IMCO (as IMO was then called) established its Legal Committee. Everybody concerned could see the sense in these two working together, and thus many years of fruitful cooperation began.

The direct outcome of that initial cooperation was the International Convention on Civil Liability for Oil Pollution Damage, which was adopted in 1969 at a Diplomatic Conference chaired by CMI's then-President.

Since then, the CMI has been instrumental in the development of several more conventions that have been adopted by IMO. The Convention on Carriage of Passengers and their Luggage by Sea was adopted in Athens in 1974. The Convention on Limitation of Liability for Maritime Claims (or LLMC) was adopted in London in 1976. A new Salvage Convention was adopted 1989, triggered by another shipwreck and pollution incident off the coast of France, the "*Amoco Cadiz*".

And the list goes on. The CMI has continued to work with IMO on several other important issues, including the LLMC 1996 Protocol, the 2002 Athens Convention, the Bunkers Convention and the Wreck Removal Convention. Last year, the CMI presented the draft of an international convention on the foreign judicial sale of ships to the IMO's Legal Committee, which will consider this in detail when it meets next month. I hope this will be another successful collaboration between our two organizations.

Over the years, the CMI has provided in-depth research papers on many key issues, such as places of refuge for vessels in distress, fair treatment of seafarers, and guidelines for national legislation on piracy and serious maritime crime.

Many of these topics will be the subject of discussion this week; but I am encouraged to note that, as ever, the CMI is very much a forward-looking organization. Fascinating and topical issues such as polar shipping and Arctic development, cybercrime in shipping, offshore liability, legal matters surrounding use of unmanned craft, the varying legal descriptions of "Ships"; liability for wrongful arrest and legal issues arising from refugee migration at sea form the basis of your agenda. These are the real issues of today and tomorrow, and I look forward with great interest to hearing the outcomes of the various discussions.

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I want to turn now to a topic that is close to my heart and which I believe all of us involved in developing the international regulatory framework for shipping need to adopt as a high priority. And that is implementation.

In a nutshell, developing and adopting conventions is an empty exercise unless the requirements of those conventions are properly and effectively implemented.

Over the years, with the help of organizations such as the CMI and many

others, IMO has developed and adopted more than 50 new international conventions. Collectively, they have done a huge amount to reduce accidents or environmental damage; mitigate the negative effects of accidents when they do occur and ensure that adequate compensation is available for the victims of such accidents.

The adoption of an IMO convention can feel like the end of a process. A conference is held, the text is agreed, and there are handshakes all round. But adoption of a convention should not be the end. If anything, it should be just the end of the beginning, because an IMO convention is only worth anything if it is effectively and universally implemented.

All those hundreds, even thousands of hours spent refining the text, all that technical expertise that has been poured into it, all those studies and all that research count for nothing unless the end result has a tangible impact. For that to happen, ratification, widespread entry into force and effective implementation are all needed. And these are every bit as important as the development and adoption of the convention itself.

In practice, implementation involves a number of different actors including shipping companies, classification societies and even seafarers. But, ultimately, the legal responsibility lies with IMO's Member Governments.

According to international law, once treaties are adopted they generally need to be incorporated into national law in order to become binding legal instruments. Most States use the time between signing a treaty and depositing their instrument of ratification to draft and pass the necessary law through their domestic parliaments. This is generally time well spent because it means the states are able to implement their convention obligations as soon as the treaty enters into force for them.

However, occasionally, states may ratify a treaty without having put in place the various legislative, administrative and other practical measures needed for effective implementation.

According to the Vienna Convention on the law of treaties, shortcomings in national law are no excuse for non-performance when it comes to international instruments. It is not within IMO's mandate to question whether a State wishing to ratify a convention is ready to implement it. Nevertheless, we do have a number of ways in which we can help our Member States in this respect.

For example, we give widespread publicity to newly adopted regulations and standards. We try to identify problems that States may be encountering and promote discussion and seek solutions in the relevant IMO committees. And, through our technical cooperation programme, we offer advice and practical assistance to help developing countries establish and operate the legal, administrative and human infrastructure they need to comply with the applicable regulations and standards.

But perhaps the most valuable tool we have in this respect is the Member

State Audit Scheme. This began in 2003 as an ambitious programme aimed at improving the accountability of Member States with respect to their IMO treaty obligations.

Modelled partly on the ICAO Universal Safety Oversight Audit Programme, IMO's Audit Scheme is intended to provide Member States with an objective assessment of how effectively they administer and implement certain key IMO instruments relating to safety and the environment.

The issues addressed by the Scheme include enacting appropriate national legislation, the administration and enforcement of applicable national laws, the delegation of authority to recognized organizations and the related control and monitoring mechanisms of the survey and certification processes by Member States.

When it was launched, the Scheme was voluntary. Several States volunteered to be audited, with encouraging results. In fact, the Scheme's potential as a tool for assessing States' performance in meeting their obligations as flag, coastal and port States under the relevant IMO conventions was considered so great that, as of the beginning of this year, participation in the scheme is now mandatory.

Nineteen Member States are scheduled to be audited in 2016 and 24 in 2017. Results of the audits will feed back into the technical cooperation programme for targeted capacity building as well as feeding back into the regulatory process.

There is clear and strong expectation that the Audit Scheme will confirm that there is, in many cases, a lack of effective national legislation for the implementation and enforcement of IMO conventions.

For me, this is a crucial subject; and it is my firm intention to make addressing this lack a major priority of my tenure as Secretary-General. And it is my sincere hope that the CMI, its members and all its affiliated national maritime law associations, will join me in this, and make it a clear objective for you, too.

If we succeed in tackling this, the benefits will be felt far beyond the world of shipping. A proper, effective national framework of shipping laws, together with the capability to enforce them, enable a country to participate fully in a broad range of maritime activities. And, for developing countries in particular, maritime activity can both provide a source of income in its own right and support growth and development across an entire national economy.

As our theme for World Maritime Day this year so rightly points out, shipping is indispensable to the world. It underpins world trade and supports the global sustainability agenda. By helping all countries to participate in it, effectively and on equal terms, we are helping to spread its benefits more evenly. And that, I believe, is a worthwhile objective that we can all share.

As you will know better than most, international shipping now has a comprehensive regulatory regime that covers just about every aspect of ship

design, construction and operation, as well as related issues like liability and compensation, wreck removal and ship recycling.

This regulatory framework will inevitably need to be amended and upgraded, to keep pace with technological developments and with the changing expectations of our Member Governments and the populations they serve. But, as IMO moves ahead, I envisage that the emphasis will increasingly be on capacity building and implementation.

This is something that can only be done by an active, engaging and outward-looking organization. Which is why I am keen to raise IMO's visibility, not just among those who already know us, but also among those who do not. I want to raise awareness among officials, ministers and decision-makers outside of our regular community. I want to increase IMO's visibility, both within shipping and externally. We need to communicate.

IMO is the single, global body for maritime policy and regulation. Over the past half-century, it has had a huge beneficial impact on shipping and this has been felt by all those who rely on the industry. Looking ahead, I would like to see the positive benefits of IMO's work spread even further.

All of the IMO family – and in this I include not just the Member States but also the associated non-governmental organizations like the CMI, and the Secretariat – contribute to the promotion of the rule of law in the field of maritime safety, security and environmental protection. And our implementation and technical cooperation programmes contribute to the spread of the rule of law around the globe. But much more needs to be done. And we can all make an active contribution, through continued support of IMO and its programmes, both in the committees and sub-committees, as well as in the field. I would encourage all of you to seek out ways to add your weight to these important efforts.

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Ladies and gentlemen, in conclusion, let me stress that the CMI's contribution to IMO's work is greatly valued and much appreciated. You have helped us frame the rules and regulations that shape the shipping industry – an industry that is essential to sustainable development in the future.

You have a packed agenda ahead of you for the next three days. There is an old saying that a bad lawyer can stretch out a case for years but a good lawyer can make it last even longer. As I am clearly in the presence of many very good lawyers, I know your ambitious timetable will be a challenge for you!

So let me take up no more of your time, and conclude by wishing you every success in your deliberations during this meeting, and by re-affirming how much I look forward to continuing the fruitful cooperation between our two organizations.

Thank you.

## VOTE OF THANKS

FRANK L. WISWALL, JR.

The Secretary-General's mention just now of the 'frailties' of lawyers brings to mind an experience of mine as a very junior member of the Bar. Some 47 years ago my Senior Partner assigned me to make an unusual motion *ex-parte* to the United States Court of Appeals for the First Circuit, in Boston. I delivered the paperwork to the Clerk of the Court, but after puzzling over it he directed me – alone – into the Chambers of the Chief Judge. The Honorable Bailey Aldrich was known to be an unusually 'crusty Yankee' taking no nonsense from lawyers; I was extremely nervous, and it showed. After looking briefly at the motion papers, Judge Aldrich said "Relax, Counsel. In this Circuit, and in Federal Courts all over the country, we hold Admiralty lawyers to be the 'Mandarins' of the legal profession." Of course, we really have no 'Mandarins' in the profession of law; but remember Mr. Kim, that IF we did they would be *Admiralty lawyers!*

I should say that it has been my privilege to have been associated with IMO and served in some capacity under every Secretary-General since Sir Colin Goad over 40 years ago, and to have taught at the World Maritime University for 19 years and the International Maritime Law Institute for 25 years. Mr. Kim has shone light on the importance of the CMI's efforts in IMO's work, and indeed reminded us how all employed in any position in the maritime profession owe to the existence of the IMO.

I must express regret at missing my friend Lord Phillips. Nicholas and I first participated some 45 years ago at the Board of Inquiry into a very bad collision between loaded tankers, with a heavy loss of life, that took place off the south coast of England. Recalling that collision brings me to a sidelight on our present undertaking.

The world's first international diplomatic conference on a maritime subject was convened in Washington, D.C., on October 16<sup>th</sup> of 1889 at the invitation of President Benjamin Harrison, and delegates of 28 nations attended. In reading the record of this "International Marine Conference", it is plain that the participants could choose to work on any of a broad menu of subjects, from rules of the road to salvage, vessel construction and equipment, qualifications of officers and seamen, official inquiries into shipwrecks and marine casualties, and to standardize what we now call 'marine notices'. Their choice was to limit the work to producing the *International Regulations for Preventing Collisions at Sea*, adopted on December 31, 1889.

On November 23, 1889, a dinner was given in New York by the Admiralty Bar of this City for leaders of the principal delegations at the Washington Conference. The address on that occasion was given by Robert Dewey Benedict, Esq., the ‘Dean’ of maritime lawyers in New York who ten years thereafter would become the first President of The Maritime Law Association of the United States; after serious and humorous reminiscences, he said:

“One thing more, however, I must speak of – I think this International Marine Conference, now sitting, is not to be the only such conference. Rather do I look on it as the first of a long series of conferences, in which able jurists and practical men from different nations shall confer upon their various systems of law, with the view of giving to all that which is best in each. ... We are fortunate, my brethren of the Admiralty Bar, that we are privileged to do honor here to our distinguished guests, members of our own profession, who have come from foreign lands to attend this Conference, and are giving their time and labor in the hope of accomplishing something which shall increase harmony among the nations and safety on the Sea.”

There, Ladies and Gentlemen, you see the seeds of what in time has grown into both the Comité Maritime International and the International Maritime Organization.

It is entirely fitting that we should after 117 years be again in New York to live out Mr. Benedict’s foresight, together with the Executive and Members of the CMI, the Executive and Members of the U.S. Maritime Law Association, and His Excellency the Secretary-General of IMO amongst us. In this light, it is fitting to extend an official welcome to our distinguished guests and to all who are attending the present Conference.

## **THE THIRTEENTH NICHOLAS J. HEALY LECTURE ON ADMIRALTY LAW**

Although the lectures in memory of Nicholas J. Healy were not strictly part of the CMI Conference many delegates attended in Honour of the former President of the MLAUS who had been in office in 1965 at the time of the previous CMI New York Conference and it has been thought fit, with the kind permission of the organisers and the Journal of Maritime Law and Commerce\* to honour his memory further and publish them in the CMI Yearbook.

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\* Robert A. Katzmann, 2016 Nicholas J. Healy Lecture, *Introduction*, 47 J. Mar. L. & Comm. 275 (2016); James Allsop, *Comity and Unity in Maritime Law*, 47 J. Mar. L. & Comm. 279 (2016).

## WELCOME REMARKS

JOHN KIMBALL

In this setting, I have the honor of appearing to be an academic and, on behalf of the Law School, let me offer a very warm welcome to the 2016 Healy Lecture on admiralty law. For those who do not know me, my name is John Kimball and, in addition to my full-time job as a partner of Blank Rome, I am an Adjunct Professor in the Law School and teach admiralty. I am very happy to see some of my students here tonight even though it is now the exam period!

This is the 13<sup>th</sup> Lecture in a bi-annual series which began in 1992. But this is a special occasion for the Healy Lecture for a number of reasons.

Many of those who are in New York attending the joint meeting of the US MLA and the CMI knew Nick Healy; but, equally, many of the younger members did not have that great honor. So, please bear with me for some very brief background. It's not an overstatement to describe Nick Healy as being among the great admiralty lawyers of all time. If we had an Admiralty Hall of Fame, he certainly would be in it. Nick was a leading practitioner and a senior partner of Healy & Baillie, a small admiralty firm which combined with Blank Rome in 2006. Nick taught Admiralty Law here at NYU for 39 years and, if you sit back and count that up, it is a lot of years and a lot of students. I was among them and I know others here tonight were as well. Nick also was a co-author of the West casebook on Admiralty which is still in use.

Both the MLA and CMI were other organizations Nick held most dear. He served as President of the MLA from 1964-66 and was president when the CMI last met in New York in 1965. He also was a Vice-President of the CMI. For virtually his entire career, Nick was active in both organizations and made them a high personal priority. Nick would be very pleased that we are gathered here tonight in this academic setting at NYU to discuss Admiralty and Uniformity in Maritime Law with a highly distinguished panel of speakers.

After the lecture, all of you are invited to join us across the hall, in Greenberg Lounge, for a cocktail reception which will run until about 7:30 pm. As a special favor and display of its support for the development of maritime law, Routledge Informa, the extraordinary publisher of maritime law books which many of us use on a daily basis, has published a second volume of past Healy Lectures covering the lectures from 2005-2015. Copies of the books will be available at no-charge in Greenberg Lounge and I encourage you to pick-up a copy. A number of our past Healy Lecturers are here tonight



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*Welcome remarks, by John Kimball*

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and will be happy to autograph the books if you ask! They include Prof. Sturley, Prof. Davies, LeRoy Lambert, Charles Anderson – if I overlooked anyone, please forgive me!

I also want to give a special thanks to the Journal of Maritime Law & Commerce for allowing Routledge Informa to reprint the papers which initially were published in the Journal. Of course, Nick had a connection to the Journal as one of its founders and as the editor-in-chief for many years. Tonight's papers also will be published in the Journal of Maritime Law & Commerce later this year.

Let me now call upon Bob Clyne, the president of the US MLA, to introduce our speakers. The minutes are ticking down and this will be one of Bob's final tasks as president of the US MLA. Bob has done a truly outstanding job as MLA president and I hope you will join me in giving Bob a very loud round of applause to thank him for a job well done.

## INTRODUCTION

HONORABLE ROBERT KATZMANN

I am delighted to be here tonight to act as moderator for a discussion about comity and uniformity in maritime law. We will hear from James Allsop, Chief Justice of the Australian Federal Court, about the common law approach. We also will hear from Joanne Gauthier, who is a judge of the Federal Court of Appeal in Canada, about how the civil law addresses this important issue.

The Healy Lecture has a distinguished lineage and I congratulate John Kimball, who founded the series, for all of his dedicated efforts, his intellectual energy and organizational skill, which bring us all here tonight. As a judge on the U.S. Court of Appeals for the Second Circuit, I am reminded of the historic salience of maritime law each day that I sit in our 17<sup>th</sup> floor courtroom at 40 Foley Square. The ceiling with its maritime motif reminds us of the rich maritime past of our Circuit. So it is a special privilege and pleasure to participate tonight.

To set the stage, let me briefly comment on how we approach the matter here in the United States.

Since the earliest days of our Republic, the quest for uniformity has been a dominant aim of maritime law. For the benefit of our many foreign guests, let me note the basics of our legal system: at the top of our federal system is the United States Supreme Court; below that, we have 11 regional Courts of Appeals which are organized geographically; the District of Columbia Circuit; the Federal Circuit; and then we have federal district courts, which act as trial courts in our federal system, and the Court of International Trade. We also have parallel state court systems which vary in structure, but which are required in maritime cases to follow United States Supreme Court decisions.

The United States Supreme Court maintains uniformity by its power under the Constitution to establish maritime law. The same is true for the Circuit Courts, such as the court I sit on, the United States Court of Appeals for the Second Circuit, which have power to establish precedent within our own circuit. Under the doctrine of *stare decisis*, district courts in our circuit are bound to follow our decisions with respect to legal issues they address.

But what of situations when we are asked to look to decisions of foreign courts? This need can arise in various settings. Domestic courts have been

asked to recognize foreign judgments on matters ranging from family law,<sup>1</sup> to enforcing contract damages awarded in foreign courts,<sup>2</sup> bankruptcy proceedings,<sup>3</sup> and admiralty.<sup>4</sup> We also may be asked to give effect to foreign laws which may apply in tort or contract cases. A classic example for maritime lawyers would be claims arising from a ship collision between foreign flag vessels in a foreign port but which nonetheless end up being litigated here.

Domestic courts examine the decisions of foreign courts through the lens of comity. Comity refers to “the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation.”<sup>5</sup> Comity is neither concrete law nor abstract legal theory; it is “more than mere courtesy and accommodation, [though] comity does not achieve the force of an imperative or obligation.”<sup>6</sup> Comity represents a nation’s understanding and respect for foreign sovereigns and their courts, as well as considerations of expediency and the rights of citizens.<sup>7</sup> It serves to promote uniformity in decisions, conserve judicial resources and enforce finality in matters which have been litigated in a court of competent jurisdiction.<sup>8</sup>

Initially, the United States Supreme Court suggested the foreign sovereign must also recognize United States judgments in order to extend comity to the judgments of that foreign sovereign.<sup>9</sup> The United States Court of Appeals for the Second Circuit has disposed of the reciprocity requirement, although it remains a factor we may consider.<sup>10</sup> Reciprocity between two nations is not required for comity to apply; a foreign sovereign is not required to recognize U.S. judgments for a domestic court to recognize that foreign sovereign’s judgments and proceedings.<sup>11</sup>

<sup>1</sup> *Diorinou v. Mezitis*, 237 F.3d 133 (2d Cir. 2001) (plaintiff sought enforcement of Greek Hague litigation regarding custody under the International Child Abduction Remedies Act).

<sup>2</sup> *Hilton v. Guyot*, 159 U.S. 113 (1895) (plaintiffs seeking enforcement of breach of contract action brought in French court).

<sup>3</sup> *See Ecoban Fin. Ltd. v. Grupo Acerero del Norte, S.A. de C.V.*, 108 F. Supp. 2d 349 (S.D.N.Y. 2000).

<sup>4</sup> *International Sea Food, Ltd. V. M/V Campeche*, 566 F.2d 482 (5th Cir. 1978) (plaintiffs seeking to enforce a judgment by Barbados court against three ship-owners and their ship).

<sup>5</sup> *Hilton*, 159 U.S. at 164.

<sup>6</sup> *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir. 1971).

<sup>7</sup> *Id.* (“[Comity] is a nation’s expression of understanding which demonstrates due regard both to international duty and convenience and to the rights of persons protected by its own laws.”).

<sup>8</sup> *Cunard S.S. Co. v. Salen Reefer Services A.B.*, 773 F.2d 452, 457 (2d Cir. 1985).

<sup>9</sup> *See Hilton*, 159 U.S. at 228.

<sup>10</sup> *See Cunard*, 773 F.2d at 460 (“[W]hile reciprocity may be a factor to be considered, it is not required as a condition precedent to the granting of comity.”).

<sup>11</sup> *See* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE U.S., § 481 (1987). Originally, in *Hilton* the Supreme Court held that reciprocity between the foreign

Comity has long been extended to judgments of foreign admiralty courts. In 1795, the Supreme Court wrote that “a Court of admiralty in one nation, can carry into effect the determination of the Court of Admiralty of another.”<sup>12</sup> Of recent significance, the Second Circuit held that the recognition of foreign admiralty decisions does not require that the foreign court be a specialized court of admiralty, but rather only that the claims at issue were maritime-based.<sup>13</sup> A foreign judgment could be considered a maritime claim, for purposes of comity, if it can be categorized as a maritime claim under U.S. law.<sup>14</sup>

In addition to maritime claims, U.S. courts are asked to examine foreign decisions dealing with a variety of matters. U.S. courts extend comity to foreign judgments or proceedings so long as the foreign court’s jurisdiction is proper and the recognition or enforcement of a foreign judgment does not encroach upon domestic public policy or infringe upon the rights of citizens foreign or domestic.<sup>15</sup>

Comity is a doctrine that embodies our respect for foreign nations, as well as the convenience for the parties of having a judgment or legal issue previously litigated given recognition. Foreign decisions found unfair<sup>16</sup> or to violate U.S. public policy<sup>17</sup> are not granted comity. Generally, however, U.S. courts extend comity to foreign decisions unless there is a compelling reason not to do so.

I hope these brief comments will set the stage for our speakers and let me now first invite Chief Justice Allsop to speak to us about the common law approach to comity and uniformity in maritime law as seen from Australia.

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nation and the United States was required in order to enforce foreign judgments. *Hilton*, 159 U.S. at 228. However, today most domestic courts rejected the reciprocity requirement in *Hilton*. See *Cunard*, 773 F.2d at 460; *Bank of Montreal v. Kough*, 612 F.2d 467 (9th Cir. 1980); *Somportex*, 453 F.2d.

<sup>12</sup> *Penhallow v. Doane’s Administrators*, 3 U.S. (3 Dall.) 54, 97 (1795) (opinion of Iredell, J.). The recognition of foreign judgments in admiralty was reiterated nearly a century later in *Hilton*, when the court stated “[T]he decree of an admiralty court abroad is equally conclusive with decrees of our admiralty courts. Indeed, both courts proceed by the same rule, are governed by the same law – the maritime law of nations, which is the universal law of nations, except where treaties alter it.” *Hilton*, 159 U.S. at 186 (citation and international quotation marks omitted).

<sup>13</sup> *D’Amico Dry Ltd. V. Primera Mar. (Hellas) Ltd.*, 756 F.3d 151, 156-57 (2d Cir. 2014).

<sup>14</sup> *Id.* at 161-62.

<sup>15</sup> *Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709 (2d Cir. 1987).

<sup>16</sup> See *Hilton*, 159 U.S. at 202-03 (French court judgment not recognized because obtained by fraud).

<sup>17</sup> See *Pravin Banker Assocs. v. Banco Popular Del Peru*, 109 F.3d 850 (2d Cir. 1997) (Peruvian court’s debt negotiations not recognized because contrary to U.S. public policy).

## COMITY AND UNITY IN MARITIME LAW

JAMES ALLSOP\*

It is a great honour to be asked to contribute this evening in this esteemed lecture.

Over recent years there have been a number of significant and illuminating articles and papers by some great maritime lawyers on the topics of uniformity and harmonisation of, and comity in, maritime law. I have set out a number below.<sup>1</sup> Also, the CMI has commenced work on examining the question of the general maritime law.<sup>2</sup> I would like to say something of the proper analytical framework, and, for common law judges, the proper judicial framework, for examining these questions.

Justice Oliver Wendell Holmes once said, in “The Path of the Law”<sup>3</sup>, that the trouble with the law was that there was too little theory; but by theory, he meant going to the root of the matter.

I wish to briefly examine how modern maritime law should be viewed.

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<sup>1</sup> Nicholas Healy “International uniformity in maritime law: the goal and the obstacles” (1979) 9 *California Western International Law Journal* 494; Gordon W Paulsen “An historical overview of the development of uniformity in international maritime law” (1983) 57 *Tulane law Review* 1065; William Tetley QC “The General Maritime Law – The Lex Maritima” (1994) 20 *Syracuse Journal of International Law and Commerce* 105; Charles S Haight “Babel Afloat: Some Reflections on Uniformity in Maritime Law” (1997) 28(2) *Journal of Maritime Law and Commerce* 189; William Tetley “Maritime Law as a Mixed Legal System (with Particular Reference to the Distinctive Nature of American Maritime Law, Which Benefits from Both Its Civil and Common Law Heritages)” (1999) 23 *Tulane Maritime Law Journal* 317; Patrick S Griggs “Uniformity of Maritime Law – An international perspective” (1999) 73 *Tulane Law Review* 1551; Patrick S Griggs “Obstacles to Uniformity of Maritime Law” (2002) *CMI Yearbook* 158; Paul Myburgh “Uniformity or Unilateralism in the Law of Carriage of Goods by Sea?” (2003) 31 *VUWLR* 355; Thomas S. Rue “The Uniqueness of Admiralty and Maritime Law” (2005) 79 *Tulane Law Review* 1127; Stuart Hetherington “The elusive panacea of uniformity: is it worth pursuing?” (2013 AMTAC Address); Eric Van Hooydonk “Towards a worldwide restatement of the general principles of maritime law” (2014) 20 *Journal of International Maritime Law* 170; Jolien Kruit “General average – general principle plus varying practical application equals uniformity?” (2015) 21 *Journal of International Maritime Law* 190.

<sup>2</sup> The working group on the reformulation of the lex maritima.

<sup>3</sup> (1897) 10 *Harvard Law Review* 457.

Maritime law should not be viewed as antiquarian, but as vibrantly contemporaneous. It should not be viewed as just a part of a fabric of national law, drawing its principles from domestic sources of constituent conception such as contracts and unjust enrichment. It should be viewed as the national manifestation of a common heritage of principle drawing its content from such sources as are appropriate to maintain its place as part of the regulation of rights and duties which are almost universally sourced in international activity and common principle. As such, it should aim at stability and order through considerations of comity, reciprocity and a connection with common interests, and at uniformity.

Lest the expression of these views be seen as the mark of the 18<sup>th</sup> century dreamers (as, condescending modern judges sometimes view the likes of Lord Mansfield) these expressions come from great mid-20<sup>th</sup> century judges. Justice Robert Jackson, giving the opinion of the Supreme Court in 1953 in *Lauritzen v Larsen*<sup>4</sup> described the international character of maritime law (in the context of the correct approach to private international law choice of law in a maritime context) as follows:

“a non-national or international maritime law of impressive maturity and universality...[having] the force of law, not from extraterritorial reach of national laws, nor from the abdication of its sovereign powers by any nation, but by acceptance from common consent of civilised communities of rules designed to foster amiable and workable commercial relations.”

In 1946, Sir Leslie Scott (le Président d'Honneur du CMI de 1947) in *The 'Tolten'* referred to the general law of the sea in the development of English maritime law<sup>5</sup>.

What is the place of this general non-national law? Does it exist? What is the correct modern framework of analysis?

An American lawyer should have less difficulty with these questions than a lawyer from another country. She or he is guided by the simple clarity of Chief Justice Marshall, speaking in 1828 in *356 Bales of Cotton*, when discussing Art III of the Constitution:

“A case in admiralty does not arise, in fact, under the Constitution or laws of the United States. These cases are as old as navigation itself; and the law, admiralty and maritime, as it has existed for ages, is supplied by our Courts to the cases as they arise.”<sup>6</sup>.

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<sup>4</sup> *Lauritzen v Larsen* 345 US 571 (1953) at 581-582.

<sup>5</sup> *The 'Tolten'* [1946] P135 at 142.

<sup>6</sup> *American Insurance Co v 356 Bales of Cotton* 26 US 511 (1828) at 545-54.6

This was 13 years after the great Justice Story expressed the jurisdictional conception of “admiralty and maritime jurisdiction” in the widest terms in *De Lovio v Boit*<sup>7</sup>.

Forty-six years after Marshall CJ spoke in *356 Bales of Cotton*, in *The ‘Lottawanna’*<sup>8</sup> the opinion of Bradley J for the Court expressed the subtle and sophisticated relationship between the general maritime law and the particular municipal maritime law. In a long passage<sup>9</sup> six propositions were made: first, the existence, separate from municipal maritime law, of the general maritime law; secondly, this separate existence of the general maritime law being owed to its internationality; thirdly, the necessity for the adoption of the general maritime law by relevant sovereign act for it to be an enforceable municipal law; fourthly, the adoption in the United States of the general maritime law by the sovereign act of the creation of a nation and a Constitution which in its terms recognised the existence of maritime law as US law; fifthly, the content of the general maritime law not being fixed or uniform, but being capable of local particular adaption; and sixthly, the general maritime law being the basis or groundwork of municipal maritime law.

The separateness and coherence of the constitutional conception involved in Art III sec 2, as lucidly described by Marshall CJ in 1828, became part of the constitutional intellectual architecture of American law.<sup>10</sup> By the early 20<sup>th</sup> century, the Supreme Court had made clear that the Constitutional grant of admiralty and maritime jurisdiction carried with it the Constitutional recognition of admiralty and maritime law, for which the federal courts and Congress were responsible; and that this law owed its content and coherence to a non-national body of principle that was the recognised source of domestic principle, through the Constitutional grant.<sup>11</sup>

It should not be thought that the development of a coherently separate body of general maritime law in the United States was of a parochial or

<sup>7</sup> 7 F Cas 418 (1815) at 443: “That maritime jurisdiction, which commercial convenience, public policy, and national rights, have contributed to establish, with slight local differences, over all Europe; that jurisdiction, which under the name of consular courts, first established itself upon the shores of the Mediterranean, and, from the general equity and simplicity of its proceedings, soon commended itself to all the maritime states; that jurisdiction, in short, which collecting the wisdom of the civil law, and combining it with the customs and usages of the sea, produced the venerable Consolato del Mare, and still continues in its decisions to regulate the commerce, the intercourse and the warfare of mankind.”

<sup>8</sup> 88 US 558 (1874).

<sup>9</sup> 88 US at 572-573.

<sup>10</sup> *Romero v International Terminal Operating Co* 358 US 354 (1959) at 364-365.

<sup>11</sup> *De Lovio v Boit*; *356 Bales of Cotton*; *The ‘Lexington’* 47 US 344 (1848); *The ‘Scotia’* 81 US 170 (1871); *The ‘Belgenland’* 114 US 355 (1885); *Southern Pacific Co v Jensen* 244 US 205 (1917); *Panama Railroad v Johnson* 264 US 375 (1924).

provincial character. The wide-ranging citation of foreign authorities and sources in the 19<sup>th</sup> and 20<sup>th</sup> centuries denies any such charge, as a reading of *Lauritzen v Larsen* makes clear.

The question of the status of the general maritime law was addressed by the English courts in the late 19<sup>th</sup> century, after the end of the civilian Admiralty Court and of Doctors' Commons and the absorption of the Admiralty Court into the new Judicature Act structure. In 1882, in *The 'Gaetano and Maria'*<sup>12</sup>, Brett LJ discussed the nature of English maritime law. The dispute concerned the validity of a bottomry bond. Choice of law was important to the resolution of the case. Under English law the master had no authority to pledge the ship, because he had failed to attempt to communicate with the owners. Brett LJ said the following:<sup>13</sup>

“Now the first question raised on the argument before us was what is the law which is administered in an English Court of Admiralty, whether it is English law, or whether it is that which is called the common maritime law, which is not the law of England alone, but the law of all maritime countries. About that question I have not the smallest doubt. Every Court of Admiralty is a court of the country in which it sits and to which it belongs. The law which is administered in the Admiralty Court of England is the English maritime law. It is not the ordinary municipal law of the country, but it is the law which the English Court of Admiralty either by Act of Parliament or by reiterated decisions and traditions and principles has adopted as the English maritime law; and about that I cannot conceive that there is any doubt.

...

[T]his case must be determined by the general maritime law as administered in England – that is in other words by the English maritime law.”

...

These passages are critical to understanding the differences between Lord Denning and Lord Diplock in *The 'Tojo Maru'* and, with respect, the false dichotomy set up by the latter to extirpate the notion of a general maritime law propounded by the former. On one view, Brett LJ was saying that the operative binding law in English courts was English law; and that there was no supra-national law to which English judges must bow. The same point had been made by Bradley J in the Supreme Court eight years earlier in *The 'Lottawanna'*<sup>14</sup>. But Brett LJ did not appear to doubt the existence of the

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<sup>12</sup> (1882) 7 P D 137.

<sup>13</sup> 7 P D at 143.

<sup>14</sup> 88 US 558 (1874).



conception of a general maritime law as the source from which English law was drawn; or indeed the coherent separateness of English maritime law – “*it is not the ordinary municipal law of the country*”. To gainsay the existence of a general maritime law would have required him to deal with centuries of recognition of maritime law as a coherent branch of the law and with the connection of a general maritime law.

It is worth moving forward to a 20<sup>th</sup> century controversy. In *The ‘Tojo Maru’*, salvors, by their negligence, had damaged the hull of the vessel being salvaged (by today’s standards, a small tanker – 25,104 gt, 692 feet loa and 95 feet in beam). She was three years old and laden with 267,639 barrels of crude oil when she collided, just after loading, with another vessel, causing damage to her fuel tank and flooding the engine room. Professional salvors with two tugs on salvage station in the Persian Gulf provided their services. A party of eight, including a chief diver with gear, were sent from Holland. The salvors were negligent in using a bolt gun to attach a steel plate to the hull. The question was whether the salvors’ negligence could be set up as a separate claim on common law negligence as a cross-claim or set-off to the award, or whether it was only a factor going in reduction or elimination of any reward. In argument in the Court of Appeal, counsel strongly pressed the distinctiveness and separateness of maritime law, relying on *The ‘Gaetano and Maria’*, as a body of principle distinct from the common law. In his reasons, Lord Denning distinguished the common law from maritime law, which he called (perhaps with an unwise flourish) “the maritime law of the world”, for which proposition he cited Brett LJ in *The ‘Gaetano and Maria’*. Tolerably clearly Lord Denning was identifying the international source of English maritime law, not a law that was superior in force to national law. He said:<sup>15</sup>

“We should...eschew our common law notions and seek for the principles of the maritime law.”

Lord Denning was not saying that there was a mystic maritime over-law; but rather the proper source of principle and doctrine for English maritime law was the general maritime law, not the common law of England. Thus, when Lord Denning said:<sup>16</sup>

“that long line of cases represents the maritime law of England and of the world on this subject”

he was not pronouncing upon any binding character of non-national law, but expressing a view about the source of English maritime law, and of its conformity with international principle.

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<sup>15</sup> [1970] P at 62.

<sup>16</sup> [1970] P at 64.

In identifying the error in some earlier Court of Appeal decisions, Lord Denning said:

“[They] had their eyes too firmly fixed on the English common law; whereas they should have had regard to the English maritime law, which is quite different.”

Likewise, Salmon LJ referred<sup>17</sup> to the separateness of (English) maritime law.

In the House of Lords, Lord Reid seemed to accept the “maritime law of England”<sup>18</sup> as being separate from the common law, but he disagreed with the Court of Appeal as to its content. Lord Morris, Viscount Dilhorne and Lord Pearson reached their views by analysing the admiralty cases, without expressing a view on the separateness of maritime law. It is Lord Diplock’s speech that is significant. He began<sup>19</sup> by mischaracterising what Lord Denning had said as the positing of a non-national law giving rise to binding rights and obligations in England. Thus, Lord Diplock rejected this over-law by reference to *The ‘Gaetano and Marian’*<sup>20</sup>, the same case that Lord Denning had used to make his point about the separateness, and separate sources, of maritime law. With this straw man defeated, Lord Diplock recognised a degree of separateness of source<sup>21</sup>, but rejected both the continuing derivation of principle from an international source and the continued separate coherence of maritime law.<sup>22</sup> Implicit in these latter statements (made explicit six years later in *United Scientific Holdings v Burnleigh Borough Council*<sup>23</sup>) was the absorption of English maritime law into the general or common law of England. The following year, however, Brandon J, in a salvage case, used the expression “the general maritime law of salvage”<sup>24</sup> in a sophisticated analysis of the inter-relationship between the law of contract and the maritime law of salvage.

The above glimpses of United States and English cases do not, of course, provide a comprehensive or definitive statement of the status of an international general maritime law. As a negative, it can be said that such a law does not exist as a binding for, or over-riding of, national law. What can

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<sup>17</sup> [1970] P at 71.

<sup>18</sup> [1972] AC at 267.

<sup>19</sup> [1972] AC at 290.

<sup>20</sup> [1972] AC at 291.

<sup>21</sup> “Because of the nature of its subject-matter and its historic derivation from sources common to many maritime nations, the internal municipal laws of different states relating to what happens on the seas may show greater similarity to one another than is to be found in laws relating to what happens on land”: [1972] AC at 290-291.

<sup>22</sup> [1972] AC at 291.

<sup>23</sup> [1972] AC 904.

<sup>24</sup> *The ‘Unique Mariner’ (No 2)* [1979] 1 Lloyd’s Rep 37 at 49 and 52.

be said as a positive? What is the purpose of analysis or discussion of it as a conception? My view is that it has utility, strength, vitality and a contemporary role in the maintenance and development of legal doctrine. This derives from the recognition of an international general maritime law as a living common source of the development of applicable rules. That there is a common body of conceptions, principles and values that operates as a foundation or source of law is difficult to deny. Paul Myburgh has put it less directly, but perhaps more subtly, when he says there is “a (largely) mutually intelligible vocabulary...[and] a strong expectation that uniformity in modern maritime law is both desirable and achievable.”<sup>25</sup> The common heritage is one of values and principles derived from centuries of common endeavour, common international activity and shared legal sources, values and principles.

The use of a common heritage of principle as a source of binding applicable law is nowhere better seen than in the exposition of the general principles of salvage, wreck and find by the Fourth Circuit in *The ‘Titanic’*.<sup>26</sup> The Fourth Circuit was concerned with the claimed rights of the salvors of the wreck of *Titanic* lying on the seabed in international waters. Important questions of jurisdiction and authority of the Court arose. Working from the premise of the existence of a general maritime law preceding the adoption of the Constitution, the Court formulated the applicable law by reference to the common body of historical maritime law sources. The Court called it an *ius gentium* governing maritime affairs, expressed, of course, through the binding expression of the national law. One significance of this, to which I will return, is how one views the *lex fori*; it can be seen as the local expression of the general maritime law (except to the extent of the influence of domestic public policy). In adopting this approach to the law of find and salvage, the Court had regard to extracts from the Rhodian Code, the Laws of Oleron, and international conventions. There was an expression of governing common principle, not a direction to a law by rules of conflict of laws.

The use of common source material has an important consequence. If one can see a body of common principle that is called upon, when necessary, in judicial decision-making, one can view decisions of foreign maritime courts as expressing a common heritage, rather than foreign laws. The adoption of this approach to the judicial task will, of itself, develop and maintain a sense of cohesion, coherence and harmony in maritime jurisprudence. It will foster the view that courts are tilling the same field, developing the same jurisprudence.

The significance may be seen in the potential impact on private international law. The nation state paradigm can be expressed: Law is

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<sup>25</sup> P. Myburgh, *op cit* 1, at 357.

<sup>26</sup> *RMS Titanic, Inc v Haver* 171 F 3d 943 (1999) at 960-964.

sovereign will; sovereignty derives from nation states; international uniformity and harmony is constructed through agreement upon international conventions, translated from acceptance into the promulgation of binding domestic law; intellectual analysis of the differences and similarities of those national laws is to be analysed through the prism of comparative law; and analysis of the proper applicable law is to be undertaken by the rules of (national) conflict of laws. This analysis works on the premise that the only maritime law is a plurality of (national) sovereign maritime laws. That premise contains within it an element that principles or ideas are not law if they are not binding of their own force on national courts.

If the nation state paradigm framework is the correct framework of analysis, work towards harmonisation or uniformity is to be reflected in the important traditional tools and levers of the search for agreement in international conventions, the search for harmonised exemplification in model rules and model laws, the promulgation of private uniformity by industry or sector contractual terms, the respectful treatment of considered foreign decisions by national courts, and the development and promulgation of public and private practical uniformity by the work of international organisations such as the IMO in shipping regulation and governance.

Each of these ways of achieving harmonisation or uniformity is important, but the whole analysis is defective and deficient unless one critical aspect of the intellectual framework is recognised. That is that there exists, at least at one level of abstraction, a common body of principles, of intellectual architecture, of practice that can bear the name “law” for particular purposes.

The laws of the land and of the sea are constructed fundamentally differently. The law regulating what happens on land is reflective of the diverse human societies which make up the world’s population. Though regularly under pressure, those societies organise themselves, by consent or force, into sovereign states. Law reflects the social will, needs and imperatives of those diverse societies. Common human values inform the formation, structure and content of those national laws – but they remain, at root, the laws of those sovereign peoples responding to their social, political and cultural imperatives. To the extent that one might have seen an *ius commune* involving broader non-national principles, perhaps this expression of the matter is overly simplistic<sup>27</sup>.

Maritime law, on the other hand, does not reflect the norms and values of a social or political group or nation or place, but the norms and values of historically international and maritime activity, especially commerce. The non-national, general character of the principles at play is reflected in a broad acceptance of the separate coherent existence of maritime law, as opposed to land law.

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<sup>27</sup> See the illuminating article by Birke Häcker: “Divergence and Convergence in the Common Law – Lessons from the *ius commune*” (2015) *LQR* 424.

The significance of the conception is the effect on the development of the law – harmoniously from common sources; in the modification of private international law rules, especially choice of law and recognition of rights by reference to a given common heritage; in the development of legal rules not by reference to national legal conceptions but by reference to international maritime conceptions; in the recognition of fundamental themes of maritime legal policy.

Let me give some examples. If a flag state legislated to abolish the seafarer's lien for wages, articles of engagement made in, and governed by a law of, such a jurisdiction would see seafarers disadvantaged. Even if a country recognised foreign liens by the *lex causae* (as in US and Canada) would not there be a powerful argument by any *lex fori* (as the forum's expression of international principle) that the common principle of protection of vulnerable seafarers by the maritime lien would override a *lex causae* of the private international law of the contract.

The expression of the matter in *The 'Belgenland'* illuminates the relationship between the general maritime law and the place of the *lex fori*.<sup>28</sup>

“...the general maritime law as understood and administered in the courts of the country in which the litigation is presented.”

One sees in this expression of the matter the importance of the recognition of a general maritime law. As adopted in a national law, and as developed in that country, by reference to international sources, the *lex fori* takes on an international complexion which may affect how choice of law rules develop and are articulated.

Another exemplification is the law of salvage. It sprang up as a right, and took its content from, maritime law as a distinctive coherent body of principles that were broadly common to all seafaring countries (though there was a difference between approaches as to reward and assistance)<sup>29</sup>. It involved, but was not defined by, the legal conception of the bargain. It contained principles closely related to and reflecting civilian conceptions of restitution and unjust enrichment, but was not governed by them. Thus, the modern sources of principle for salvage include, but are not restricted to, the law of contract and unjust enrichment. Any denial of its contemporary international and maritime sources as antiquarian would risk two things: first, a lack of coherence of modern law with its historical sources; secondly, making a national law parochial and inward looking.

For instance, there can be no serious doubt that maritime law permitted

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<sup>28</sup> *The 'Belgenland'* 114 US at 369.

<sup>29</sup> Tetley W *International Admiralty and Maritime Law* (Editions Yvan Blais 2002) ch 8.

a court to review a salvage contract and set it aside or vary it if it were unjust or unfair. No use of language can hide the different content, reasons for and source of that approach from common law and Equity. To cease to recognise this separate coherence risks confusion and error.

Further, central to the whole notion of salvage is the concept of reward – not mere compensation for work and labour, nor payment for benefit. As Dr Lushington said:<sup>30</sup>

“Salvage is not governed by the ordinary rules which prevail in mercantile actions on shore. Salvage is governed by a due regard to benefit received, combined with a just regard for the general interests of ships and marine commerce.”

As Sir James Hannen P made clear in *The ‘Five Steel Barges’*<sup>31</sup> the right and obligation did not arise from express or implied contract or request but from benefit. “[There is a] confusion” he said, “of two systems of law in viewing salvage as implied request.”<sup>32</sup>

This is not to call for the segmented isolation of maritime law; rather, it is to suggest that international harmony is linked directly to the recognition of maritime law’s international sources and separate coherence, related to, but distinct from, the other great sources of our overall legal fabric: the common law and Equity.

In the United States (as reflected in the approach of the Fourth Circuit Court of Appeals in *The ‘Titanic’*) “a claim for salvage in an American court arises out of the *ius gentium* and does not depend on the local laws of particular countries.”<sup>33</sup>

Another exemplification is the enforcement of maritime claims. International maritime commerce is carried on under a diverse, but broadly harmonious, maritime security regime, providing for the enforcement of maritime claims by a number of procedural mechanisms. That harmony is not, however, uniformity. Important differences underlie different national legal systems, even though the basic purpose and result of the security regime is harmonious. The national regimes of different maritime nations have their differences (and the extent of recognition of maritime liens is an important one). There is also a degree of harmony in the utilisation of common legal conceptions.

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<sup>30</sup> *The ‘Fusilier’* (1865) Br & L 341 at 347; 167 ER 391 at 394.

<sup>31</sup> (1890) 15 PD 142.

<sup>32</sup> (1890) 15 PD at 146.

<sup>33</sup> *The ‘National Defender’* [1970] 1 Lloyd’s Rep 40 at 43, Milton Pollack DJ citing *The ‘Belgenland’* 114 US 355 (1885) at 369; *Barkas v Cia Naviera Coronado SA* 126 F Supp 532; 1955 AMC 1787 (SDNY 1954); *Dalmas v Stathatos* 84 F Supp 828; 1949 AMC 770 (SDNY 1949); *Chapman v Engines of Greenpoint* 38 Fed 671 (SDNY 1889); *Anderson v Edam* 13 Fed 135 (EDNY 1882); *Bee* 3 Fed Cas No 1219 (D. Me 1836).

The maritime security regime is founded upon the operation of two forms of procedure – the action *in rem* and the procedural remedy of attachment. The differences between these two mechanisms were, as far as they could be, resolved by broad international agreement in the 1952 Arrest Convention.<sup>34</sup>

The importance of the 1952 Arrest Convention is that it provided a broadly common procedure (the judicial arrest of an ocean-going ship) for a common group of *maritime* claims such that such *maritime* claims could be enforced against *maritime* property. Important differences remained in national procedures – most importantly, between common law countries that employed the action *in rem* (by which jurisdiction *against the ship*, but not the owner of the ship, was founded by the presence of the ship within the jurisdiction) and civil law countries which did not employ or recognise the *in rem* action, but which utilised maritime attachment as a collateral procedure available to support a claim otherwise within the jurisdiction of the Court or a claim elsewhere. There are also important differences in how the *in rem* claim is conceived and underpinned – especially by reference to the maritime lien.

How maritime liens are treated by national maritime laws depends, to a significant degree, on the structure and public policy of those laws.

Different legal systems identify different maritime claims that give rise to the maritime lien. Those differences of recognition can be attributed to different legal policy in the development of maritime law in different jurisdictions. In the United States in the 19<sup>th</sup> century the maritime lien came to be seen as the foundation for the action *in rem*. In *The 'Rock Island Bridge'*<sup>35</sup> Field J said that the maritime lien and proceedings *in rem* were correlative: “where one exists, the other can be taken, and not otherwise.” As United States law (that is, federal admiralty law, as a species of true federal general law not dependent for its existence on the doctrine of federal common law in diversity cases enunciated in *Swift v Tyson*<sup>36</sup> and over-ruled in *Erie Railroad v Tompkins*<sup>37</sup>) developed, this correlative relationship saw the maritime lien recognised for virtually all maritime claims, thereby permitting the action *in rem* against the ship for virtually all maritime claims concerning the ship. This correlative relationship between the lien and the action *in rem* underpinned and gave rise to the doctrine of the theory of the personification of the vessel as the basis for maritime liability which in turn underpins the action *in rem* in the United States.<sup>38</sup>

<sup>34</sup> *International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships*, done at Brussels 10 May 1952.

<sup>35</sup> 73 US 213 at 215 (1867).

<sup>36</sup> 41 (16 Pet) US 1 (1842).

<sup>37</sup> 304 US 64 (1938)

<sup>38</sup> See Force, R *Admiralty and Maritime Law* (2<sup>nd</sup> ed, Federal Judicial Centre, 2013) at 173-189; Price, G *The Law of Maritime Liens* (Sweet and Maxwell 1940) at 4-13; Force, R Yiannopoulos, AN and Davies, M *Admiralty and Maritime Law* vol 2 (Beard Books, 2005)

Anglo-Commonwealth law developed very differently. By the 1880s, in English law, a distinction was drawn between a limited class of claims that gave rise to maritime liens that could be enforced by an action *in rem* and otherwise (unsecured) claims that nevertheless could be enforced by an action *in rem*. In the latter class of case (not based on a maritime lien) the object of the action *in rem* came to be founded on the procedural pressure or persuasion (much like attachment) upon *the owner* of the vessel to submit to the jurisdiction in order to defend its asset. The essential connection between the ship and the claim in respect of the ship was the ownership of the ship. By the end of the 19<sup>th</sup> century, it was clear that under English law the maritime lien arose only for claims for: damage done by a ship; salvage; seamen's wages; master's wages and disbursements; and bottomry and respondentia.

The different structure of United States maritime law and the place of the maritime lien in it can be seen in the breadth of scope of maritime liens reflecting the legal policy emphasising the rights of maritime creditors, rather than a different legal policy behind a limited recognition of liens that may impede the deployment of ships. Further, the division of liens in the United States into preferred maritime liens, being a restricted class of liens that have priority over preferred ship mortgagees and other liens ranking below such mortgages, can be seen to be part of the national policy of promoting American maritime interests.

To take one specific lien, for seafarers' wages, the strength of legal policy behind the lien can be seen even in England, where the so-called procedural theory dominated. That theory emphasised (generally) the liability of the owner (or a party in his stead – such as demise charterer) as the foundation of the lien. In *The 'Castlegate'*, however, the maritime lien for seafarers' wages was said to be sourced, not in this procedural theory, but in the ship itself (as in the personification theory), Lord Watson saying<sup>39</sup>:

In the case of lien for wages of master and crew the legislature has recognised the rule that it attaches to ships independently of any personal obligation of the owner, the sole condition being that such wages shall have been earned on board the ship.

See also *Phillips v The Highland Railway Company (The 'Ferret')*<sup>40</sup> where wages were earned by seamen acting under the orders of someone attempting to steal the vessel.

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ch 3; *Salazar v Atlantic Sun* 881 F2d 73 (1989); Davies, M "In Defense of Unpopular Virtues: Personification and Ratification" (2000) 75 *Tulane LR* 337 at 341 ff; Gilmore, G and Black, CL, *The Law of Admiralty* (2<sup>nd</sup> ed, Foundation Press, 1975) ch 9.

<sup>39</sup> [1893] AC 38 at 52.

<sup>40</sup> (1883) 8 App Cas 329



In a varied, but broadly harmonious, maritime security regime, the different recognition of the maritime lien is informed by maritime legal policy, sometimes universal, sometimes national. In an international system where the attempts to unify maritime liens by convention have been broadly unsuccessful<sup>41</sup>, differences are inevitable. This is not a cause for despair, but practical acceptance. Importantly, the conceptions, terminology and framework of analysis are the same. Policy and choice therefrom sometimes differ.

Modern maritime law, including the rules of private international law that govern maritime activity, should be grounded in maritime and international common sources; the common heritage of maritime principle exists and moulds legal development.

To deny maritime law's international character, and its taxonomical place in the law and in the development of its principle, is ultimately to deprive it of the source of its coherence and to make provincial what is international, to the long term detriment of those whose law it is. Essential to that character and taxonomy is the harmony of maritime law.

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<sup>41</sup> Three attempts were made in the 20<sup>th</sup> century to harmonise international practice involving maritime liens: *The International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages* done at Brussels, 10 April 1926; an identically named convention done at Brussels, 27 May 1967; and the *International Convention on Maritime Liens and Mortgages* done at Geneva on 6 May 1993. Though some countries have incorporated parts of these conventions into their national laws, these conventions have not been widely taken up or ratified: see Jackson, *DC Enforcement of Maritime Claims* (4<sup>th</sup> ed, LLP, 2005) at 509-516. The changing policy over the years can be seen in the different (and narrowing) classes of liens posited for international agreement in the maritime lien and mortgage conventions: the 1926 MLM Convention, Art 2 (especially para 5), the 1967 MLM Convention, Art 4(1), and the 1993 MLM Convention, Art 4(1).



## DOCUMENTATION

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## YORK-ANTWERP RULES 2016

### *Rule of Interpretation*

In the adjustment of general average the following Rules shall apply to the exclusion of any law and practice inconsistent therewith.

Except as provided by the Rule Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules.

### *Rule Paramount*

In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred.

### *Rule A*

1. There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.
2. General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.

### *Rule B*

1. There is a common maritime adventure when one or more vessels are towing or pushing another vessel or vessels, provided that they are all involved in commercial activities and not in a salvage operation.

When measures are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.

2. If the vessels are in common peril and one is disconnected either to increase the disconnecting vessel's safety alone, or the safety of all vessels in the common maritime adventure, the disconnection will be a general average act.
3. Where vessels involved in a common maritime adventure resort to a port or place of refuge, allowances under these Rules may be made in relation to each of the vessels. Subject to the provisions of paragraphs 3 and 4 of Rule G, allowances in general average shall cease at the time that the common maritime adventure comes to an end.

### *Rule C*

1. Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.

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2. In no case shall there be any allowance in general average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure.

3. Demurrage, loss of market, and any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever, shall not be allowed as general average.

*Rule D*

Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the common maritime adventure, but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.

*Rule E*

1. The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.

2. All parties to the common maritime adventure shall, as soon as possible, supply particulars of value in respect of their contributory interest and, if claiming in general average, shall give notice in writing to the average adjuster of the loss or expense in respect of which they claim contribution, and supply evidence in support thereof.

3. Failing notification, or if any party does not supply particulars in support of a notified claim, within 12 months of the termination of the common maritime adventure or payment of the expense, the average adjuster shall be at liberty to estimate the extent of the allowance on the basis of the information available to the adjuster. Particulars of value shall be provided within 12 months of the termination of the common maritime adventure, failing which the average adjuster shall be at liberty to estimate the contributory value on the same basis. Such estimates shall be communicated to the party in question in writing. Estimates may only be challenged within two months of receipt of the communication and only on the grounds that they are manifestly incorrect.

4. Any party to the common maritime adventure pursuing a recovery from a third party in respect of sacrifice or expenditure claimed in general average, shall so advise the average adjuster and, in the event that a recovery is achieved, shall supply to the average adjuster full particulars of the recovery within two months of receipt of the recovery.

*Rule F*

Any additional expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

*Rule G*

1. General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the common maritime adventure ends.
2. This rule shall not affect the determination of the place at which the average adjustment is to be prepared.
3. When a ship is at any port or place in circumstances which would give rise to an allowance in general average under the provisions of Rules X and XI, and the cargo or part thereof is forwarded to destination by other means, rights and liabilities in general average shall, subject to cargo interests being notified if practicable, remain as nearly as possible the same as they would have been in the absence of such forwarding, as if the common maritime adventure had continued in the original ship for so long as justifiable under the contract of carriage and the applicable law.
4. The proportion attaching to cargo of the allowances made in general average by reason of applying the third paragraph of this Rule shall be limited to the cost which would have been borne by the owners of cargo if the cargo had been forwarded at their expense. This limit shall not apply to any allowances made under Rule F.

*Rule I – Jettison of Cargo*

No jettison of cargo shall be allowed as general average, unless such cargo is carried in accordance with the recognised custom of the trade.

*Rule II – Loss or Damage by Sacrifices for the Common Safety*

Loss of or damage to the property involved in the common maritime adventure by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be allowed as general average.

*Rule III – Extinguishing Fire on Shipboard*

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be allowed as general average; except that no allowance shall be made for damage by smoke however caused or by heat of the fire.

*Rule IV – Cutting Away Wreck*

Loss or damage sustained by cutting away wreck or parts of the ship which have been previously carried away or are effectively lost by accident shall not be allowed as general average.

*Rule V – Voluntary Stranding*

When a ship is intentionally run on shore for the common safety, whether or not she might have been driven on shore, the consequent loss or damage to the

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property involved in the common maritime adventure shall be allowed in general average.

*Rule VI – Salvage Remuneration*

(a) Expenditure incurred by the parties to the common maritime adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure and subject to the provisions of paragraphs (b), (c) and (d) (b) Notwithstanding (a) above, where the parties to the common maritime adventure have separate contractual or legal liability to salvors, salvage shall only be allowed should any of the following arise:

(i) there is a subsequent accident or other circumstances resulting in loss or damage to property during the voyage that results in significant differences between salvaged and contributory values,

(ii) there are significant general average sacrifices,

(iii) salvaged values are manifestly incorrect and there is a significantly incorrect apportionment of salvage expenses,

(iv) any of the parties to the salvage has paid a significant proportion of salvage due from another party,

(v) a significant proportion of the parties have satisfied the salvage claim on substantially different terms, no regard being had to interest, currency correction or legal costs of either the salvor or the contributing interest.

(c) Salvage expenditures referred to in paragraph (a) above shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimizing damage to the environment such as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

(d) Special compensation payable to a salvor by the shipowner under Article 14 of the International Convention on Salvage, 1989 to the extent specified in paragraph 4 of that Article or under any other provision similar in substance (such as SCOPIC) shall not be allowed in general average and shall not be considered a salvage expenditure as referred to in paragraph (a) of this Rule.

*Rule VII – Damage to Machinery and Boilers*

Damage caused to any machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the propelling machinery and boilers shall in any circumstances be allowed as general average.

*Rule VIII – Expenses Lightening a Ship when Ashore, and Consequent Damage*

When a ship is ashore and cargo and ship's fuel and stores or any of them are

discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and any loss or damage to the property involved in the common maritime adventure in consequence thereof, shall be allowed as general average.

*Rule IX – Cargo, Ship’s Materials and Stores Used for Fuel*

Cargo, ship’s materials and stores, or any of them, necessarily used for fuel for the common safety at a time of peril shall be allowed as general average, but when such an allowance is made for the cost of ship’s materials and stores the general average shall be credited with the estimated cost of the fuel which would otherwise have been consumed in prosecuting the intended voyage.

*Rule X – Expenses at Port of Refuge, etc.*

(a) (i) When a ship shall have entered a port or place of refuge or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, the expenses of entering such port or place shall be allowed as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be allowed as general average.

(ii) When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be allowed as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

(b) (i) The cost of handling on board or discharging cargo, fuel or stores, whether at a port or place of loading, call or refuge, shall be allowed as general average when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, except in cases where the damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage.

(ii) The cost of handling on board or discharging cargo, fuel or stores shall not be allowable as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.

(c) Whenever the cost of handling or discharging cargo, fuel or stores is allowable as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be allowed as general average. The provisions of Rule XI shall apply to



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the extra period of detention occasioned by such reloading or restowing.

(d) When the ship is condemned or does not proceed on her original voyage, storage expenses shall be allowed as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

*Rule XI – Wages and Maintenance of Crew and Other Expenses Putting in to and at a Port of Refuge, etc.*

(a) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be allowed as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).

(b) (i) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extra-ordinary circumstances which render that entry or detention necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be allowed in general average.

(ii) Fuel and stores consumed during the extra period of detention shall be allowed as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

(iii) Port charges incurred during the extra period of detention shall likewise be allowed as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

(iv) Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstance connected with such damage having taken place during the voyage, then the wages and maintenance of master, officers and crew and fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be allowable as general average, even if the repairs are necessary for the safe prosecution of the voyage.

(v) When the ship is condemned or does not proceed on her original voyage, the wages and maintenance of the master, officers and crew and fuel and stores consumed and port charges shall be allowed as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

(c) (i) For the purpose of these Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be

imposed by law upon the shipowners or be made under the terms of articles of employment.

(ii) For the purpose of these Rules, port charges shall include all customary or additional expenses incurred for the common safety or to enable a vessel to enter or remain at a port of refuge or call in the circumstances outlined in Rule XI(b)(i).

(d) The cost of measures undertaken to prevent or minimise damage to the environment shall be allowed in general average when incurred in any or all of the following circumstances:

(i) as part of an operation performed for the common safety which, had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage reward;

(ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);

(iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule XI(b), provided that when there is an actual escape or release of pollutant substances, the cost of any additional measures required on that account to prevent or minimise pollution or environmental damage shall not be allowed as general average;

(iv) necessarily in connection with the handling on board, discharging, storing or reloading of cargo, fuel or stores whenever the cost of those operations is allowable as general average.

*Rule XII – Damage to Cargo in Discharging, etc.*

Damage to or loss of cargo, fuel or stores sustained in consequence of their handling, discharging, storing, reloading and stowing shall be allowed as general average, when and only when the cost of those measures respectively is allowed as general average.

*Rule XIII – Deductions from Cost of Repairs*

(a) Repairs to be allowed in general average shall not be subject to deductions in respect of “new for old” where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from the 31<sup>st</sup> December of the year of completion of construction to the date of the general average act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

(b) The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the ship. No deduction shall be made in respect of provisions, stores, anchors and chain cables. Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

(c) The costs of cleaning, painting or coating of bottom shall not be allowed

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in general average unless the bottom has been painted or coated within the 24 months preceding the date of the general average act in which case one half of such costs shall be allowed.

*Rule XIV – Temporary Repairs*

- (a) Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be allowed as general average.
- (b) Where temporary repairs of accidental damage are effected in order to enable the common maritime adventure to be completed, the cost of such repairs shall be allowed as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.
- (c) No deductions “new for old” shall be made from the cost of temporary repairs allowable as general average.

*Rule XV – Loss of Freight*

Loss of freight arising from damage to or loss of cargo shall be allowed as general average, either when caused by a general average act, or when the damage to or loss of cargo is so allowed.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

*Rule XVI – Amount to be Allowed for Cargo Lost or Damaged by Sacrifice*

- (a) (i) The amount to be allowed as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. Such commercial invoice may be deemed by the average adjuster to reflect the value at the time of discharge irrespective of the place of final delivery under the contract of carriage.
- (ii) The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.
- (b) When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be allowed in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

*Rule XVII – Contributory Values*

- (a) (i) The contribution to a general average shall be made upon the actual net values of the property at the termination of the common maritime adventure

except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. Such commercial invoice may be deemed by the average adjuster to reflect the value at the time of discharge irrespective of the place of final delivery under the contract of carriage.

(ii) The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge. Any cargo may be excluded from contributing to general average should the average adjuster consider that the cost of including it in the adjustment would be likely to be disproportionate to its eventual contribution.

(iii) The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.

(b) To these values shall be added the amount allowed as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average or fall upon the ship by virtue of an award for special compensation under Article 14 of the International Convention on Salvage, 1989 or under any other provision similar in substance<sup>1</sup>. Where payment for salvage services has not been allowed as general average by reason of paragraph (b) of Rule VI, deductions in respect of payment for salvage services shall be limited to the amount paid to the salvors including interest and salvors' costs.

(c) In the circumstances envisaged in the third paragraph of Rule G, the cargo and other property shall contribute on the basis of its value upon delivery at original destination unless sold or otherwise disposed of short of that destination, and the ship shall contribute upon its actual net value at the time of completion of discharge of cargo.

(d) Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount allowed as general average.

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<sup>1</sup> The underlined words of Rule XVII (b) were omitted by error from the text of the York-Antwerp Rules adopted in New York in May 2016. They were in previous versions, and were not intended to be excluded in the New York discussions. The CMI Assembly will be asked in Genoa in September 2017 to approve this correction to the published text of the York-Antwerp Rules 2016.

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(e) Mails, passengers' luggage and accompanied personal effects and accompanied private motor vehicles shall not contribute to general average.

*Rule XVIII – Damage to Ship*

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

(a) When repaired or replaced,

The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

(b) When not repaired or replaced,

The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

*Rule XIX – Undeclared or Wrongfully Declared Cargo*

(a) Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at the time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

(b) Where goods have been wrongfully declared at the time of shipment at a value which is lower than their real value, any general average loss or damage shall be allowed on the basis of their declared value, but such goods shall contribute on the basis of their actual value.

*Rule XX – Provision of Funds*

(a) The capital loss sustained by the owners of goods sold for the purpose of raising funds to defray general average disbursements shall be allowed in general average.

(b) The cost of insuring general average disbursements shall be allowed in general average.

*Rule XXI – Interest on Losses Allowed in General Average*

(a) Interest shall be allowed on expenditure, sacrifices and allowances in general average until three months after the date of issue of the general average adjustment, due allowance being made for any payment on account by the contributory interests or from the general average deposit fund.

(b) The rate for calculating interest accruing during each calendar year shall be the 12-month ICE LIBOR for the currency in which the adjustment is prepared,

as announced on the first banking day of that calendar year, increased by four percentage points. If the adjustment is prepared in a currency for which no ICE LIBOR is announced, the rate shall be the 12-month US Dollar ICE LIBOR, increased by four percentage points.

*Rule XXII – Treatment of Cash Deposits*

(a) Where cash deposits have been collected in respect of general average, salvage or special charges, such sums shall be remitted forthwith to the average adjuster who shall deposit the sums into a special account, earning interest where possible, in the name of the average adjuster.

(b) The special account shall be constituted in accordance with the law regarding client or third party funds applicable in the domicile of the average adjuster. The account shall be held separately from the average adjuster's own funds, in trust or in compliance with similar rules of law providing for the administration of the funds of third parties.

(c) The sums so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto, of the general average, salvage or special charges in respect of which the deposits have been collected. Payments on account or refunds of deposits may only be made when such payments are certified in writing by the average adjuster and notified to the depositor requesting their approval. Upon the receipt of the depositor's approval, or in the absence of such approval within a period of 90 days, the average adjuster may deduct the amount of the payment on account or the final contribution from the deposit.

(d) All deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

*Rule XXIII – Time Bar for Contributing to General Average*

(a) Subject always to any mandatory rule on time limitation contained in any applicable law:

(i) Any rights to general average contribution including any rights to claim under general average bonds and guarantees, shall be extinguished unless an action is brought by the party claiming such contribution within a period of one year after the date upon which the general average adjustment is issued. However, in no case shall such an action be brought after six years from the date of termination of the common maritime adventure.

(ii) These periods may be extended if the parties so agree after the termination of the common maritime adventure.

(b) This rule shall not apply as between the parties to the general average and their respective insurers.

## **CMI GUIDELINES RELATING TO GENERAL AVERAGE**

(FINAL TEXT APROVED BY CMI ASSEMBLY 6 MAY 2016)

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#### A) INTRODUCTION

##### 1. *Objective*

These guidelines are intended to assist in dealing with general average cases and to provide:

- general background information
- guidance as to recognised best practice
- an outline of procedures

##### 2. *Effect of guidelines*

These guidelines do not form part of the York-Antwerp Rules; they are not binding and are not intended to over-ride or alter in any way the provisions

of the York-Antwerp Rules, the contracts of carriage or any governing jurisdictions.

### 3. *Review and amendment*

The first edition of the CMI Guidelines has been adopted by the plenary session of the 42nd International Conference of CMI in New York, May 2016, and ultimately approved by the Assembly of CMI.

In order to monitor the working and effectiveness of the CMI Guidelines, a Standing Committee shall be constituted to consist of:

- A chairman nominated by the Assembly of CMI
- A representative nominated by the International Chamber of Shipping
- A representative nominated by the International Union of Marine Insurance
- Five additional members nominated by the Assembly of CMI

The Standing Committee may recommend changes to the Guidelines as circumstances dictate, which shall be submitted to the Assembly of CMI for approval.

## B) BASIC PRINCIPLES

### 1. *Background*

The principle of general average has its origin in the earliest days of maritime trade, and is based on simple equity; if one merchant's cargo is jettisoned to save the ship and the rest of the cargo, the shipowner and other cargo interests would all contribute to make good the value of the jettisoned cargo. The word "average" is a medieval term meaning a "loss". Thus a "general" average involved all the interests on a voyage, whereas a "particular" average affects only one interest. As the doctrine developed various types of losses were added to that of jettison; perhaps the most important step was the recognition that expenditure of money was in principle no different from the sacrifice of property, if it was incurred in similar circumstances and for the same purpose.

General average varied in its development in the different leading maritime countries, so that by the latter part of the 19th century substantial differences existed in law and practice throughout the world. In view of the international character of shipping the disadvantages of this were obvious, and there began the series of attempts to obtain international uniformity. An International Conference held in York in 1864 produced the York Rules, which were revised at Antwerp in 1877 to become the first set of York-Antwerp Rules.

In a modern context, as well as continuing to provide an equitable remedy when property is sacrificed for the common good, the principles of general average, as now embodied in the York-Antwerp Rules, also continue to perform a useful function in helping to define important borders that lie between:



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*General Average*


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- Matters that form part of the shipowners' reasonable obligations to carry out the contracted voyage and those losses and expenses that arise in exceptional circumstances.
- Property and liability insurers as their differing responsibilities meet and sometimes merge, in the context of a serious casualty.

Both of these difficult areas benefit from the reservoir of established law and practice that general average provides, helping to secure a degree of certainty that is always the objective of commercial interests.

It is important to appreciate that the York-Antwerp Rules do not have the status of an international convention. They take effect only by being incorporated into contracts of affreightment. The Rules are updated periodically under the auspices of Comité Maritime International, which is made up of national Maritime Law Associations.

Rule A of the York-Antwerp Rules defines a general average act as follows:

*“There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.”*

## 2. *York-Antwerp Rules*

The York-Antwerp Rules consist of lettered rules (A-G) and 23 numbered rules. The lettered rules set out various broad principles as to what constitutes general average; the numbered rules deal with specific instances of sacrifice and expenditure and set out detailed guidelines concerning allowances etc.

Broadly speaking, the York-Antwerp Rules have recognised two main types of allowance:

“Common safety” allowances: sacrifice of property (such as flooding a cargo hold to fight a fire) or expenditure (such as salvage or lightening a vessel) that is made or incurred while the ship and cargo were actually in the grip of peril.

“Common benefit” allowances: once a vessel is at a port of refuge, expenses necessary to enable the ship to resume the voyage safely (but not the cost of repairing accidental damage to the ship) for example, the cost of discharging, storing and reloading cargo as necessary to carry out repairs, port charges, and wages etc. during detention for repairs and outward port charges.

The York-Antwerp Rules are prefaced by a Rule of Interpretation which gives priority to the numbered rules when there is a conflict with the lettered rules. For example, Rule C excludes losses due to delay but Rule XI says that certain detention expenses at a port of refuge (e.g. port charges, wages and maintenance) can be allowed; Rule XI takes priority over the lettered Rule C and such expenses can therefore be allowed.

The York-Antwerp Rules also include a Rule Paramount after the Rule of Interpretation, which states as follows:

*“Rule Paramount*

*In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred.”*

The burden of proof lies on the party claiming in general average to prove that both the general average act and the amount of any allowance are reasonable. It is suggested that in applying this rule there can be no absolute standard of “reasonableness” and that a situation must be judged on the particular facts prevailing at the time and place of the incident.

### 3. *General Average events*

The following are simple examples of potential general average situations:

Casualty	Type of sacrifice or expenditure
<i>Grounding:</i>	Damage to vessel and machinery through efforts to refloat. Loss of or damage to cargo through jettison or lightening of the vessel. Cost of storing and reloading any cargo so discharged. Port of refuge expenses.
<i>Fire:</i>	Damage to ship or cargo due to efforts to extinguish the fire. Port of refuge expenses.
<i>Shifting of cargo in heavy weather:</i>	Jettison of cargo. Port of refuge expenses.
<i>Heavy weather, collision, machinery breakdown, or other accident involving damage to ship and resort to or detention at a port:</i>	Port of refuge expenses.  Towage
<i>General:</i>	Payments relating to salvage may also be allowed as general average in any of the above circumstances.

### 4. *Adjustment of general average*

The basic principles are:

#### 1. Property at risk

Generally, all the property that is involved in the voyage (or “common maritime adventure”) and is at risk at the time of the occurrence giving rise to

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*General Average*

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the general average act is required to contribute to the general average losses and expenses. The contribution is based on a pro rata division according to the value of that property at the end of the voyage.

#### 2. Contributory values

The sharing of general average sacrifices and expenses is achieved by a pro rata division over what the York-Antwerp Rules refer to as “Contributory Values”.

The basis for calculation of contributory values and general average losses is the value of the property to its owner at the termination of the adventure. Expenses incurred in respect of the property after the general average act (other than those which are allowed in general average) must be deducted in arriving at the contributory value. This ensures that property contributes according to the actual net benefit it has received, by deducting the expenses it has had to bear to realise the benefit of getting the property at destination.

Since values are assessed as at the end of the voyage, it also follows that the amount of contribution may be varied by further loss or damage to the property between the time of the general average act and the arrival at destination. For example, if the property is totally lost due to a subsequent accident it will have no contributory value and will not contribute to the general average.

#### 3. Termination of the voyage

Normally, the “common maritime adventure” is considered to be terminated on completion of discharge of cargo at the port of destination. If there is an abandonment of the voyage at an intermediate port then the adventure terminates at that port. If, because of a casualty, the whole cargo is forwarded from an intermediate port by another vessel the cost of forwarding may be allowable as general average, subject to criteria set out in Rules F and G of the York-Antwerp Rules.

#### 4. Equality of contribution

Equality of contribution must be maintained between the owner of the property sacrificed and the owner of the property saved. In practice this is achieved by the device of adding to the contributory values of property lost or damaged by general average sacrifice the amount allowed (or “made good”) in general average in respect of that sacrifice. If this were not done the owner of jettisoned cargo would receive benefit in the form of money from the general average for loss of his goods without participating in or contributing to the general average losses, as can be seen from the following example:

Assume that cargo B worth 1,000 is sacrificed for the common safety. A general average of 1,000 is apportioned over the values of ship and arrived cargo (which are all 1,000). If this were between only those parties arrived, the figures would be:

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*Documentation*


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Ship on	1,000	pays	334
Cargo A on	1,000	“	333
Cargo Bon	—	“	—
Cargo C on	1,000	“	333
	3,000	pays	1,000

The result of this apportionment is that after paying their contributions to B the shipowner and merchants A and C would have property with an effective value of 667, whereas merchant B would receive cash amounting to 1,000. This is clearly inequitable, so merchant B also makes a notional contribution to the general average on the amount of the loss made good to him in general average, that is:

Ship on	1,000	pays	250
Cargo A on	1,000	pays	250
Cargo B on	1,000	is liable for	250
Cargo C on	1,000	pays	250
	4,000	pays	1,000

By making Cargo B “contribute” on the basis of the amount made good he will receive 1,000 less 250 = 750, and everyone is now in the same position.

#### 5. Example adjustment

#### General Average

#### Shipowners' losses and expenses

Cost of repairs of damage to vessel's machinery sustained in refloating operations.	US\$ 250,000
Cost of discharging, storing in lighters, and reloading cargo discharged to lighten vessel.	100,000
Salvage paid to tugs for refloating vessel.	1,150,000

#### Cargo owner's losses

Value of cargo jettisoned in efforts to refloat.	US\$ 500,000
Damage to cargo caused by forced discharge, storage and reloading.	100,000
	600,000
	US\$2,100,000

#### Apportioned

#### Ship

Arrived value at destination

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*General Average*


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in damaged condition.	US\$6,750,000	
Add allowance in general average for refloating damage.	250,000	
	US\$7,000,000	US\$ 700,000
		pays in ppn.

**Cargo**

Invoice value after deduction of loss and damage.	US\$13,400,000	
Add allowance in general average in respect of jettison and damage due to forced discharge.	600,000	14,000,000
	US\$21,000,000	1,400,000
		US\$2,100,000
		pays in ppn.

(General Average equals 10% of the contributory values.)

**Balance under the adjustment**

The Shipowner:

Receives credit for general average losses and expenses.	US\$	1,500,000
Pays general average contribution.		700,000
	Balance to receive	US\$ 800,000

The cargo owner:

Pays general average contribution.	US\$	1,400,000
Receives credit for general average losses.		600,000
	Balance to pay	US\$ 800,000

**6. Contract of carriage**

The parties to the adventure usually make special provision in the contract of carriage regarding general average, the most common being a clause to the effect that general average is to be adjusted in accordance with the York-Antwerp Rules. Such stipulations may be contained in the charter party, if any, or the bills of lading, or in both documents, thereby giving contractual effect to the Rules.

Rule D of the York-Antwerp Rules gives explicit recognition to the fact that general average exists irrespective of fault or breach of contract by any of the parties. It follows that normally the procedures for protecting the rights of the parties in general average must be observed even when it is suspected that such a fault or breach has taken place. Equally, the existence of a general average situation does not prejudice any rights or defences that are open to

parties, for example with regard to cargo damage or alleging a breach of contract as grounds for not paying a general average contribution.

The giving of general average security in the customary terms is a promise to pay any general average contribution that is found to be properly and legally due. Generally, if there has been a causative breach of contract the contribution cannot be so described, and cargo interests may have grounds for declining to pay their contribution to general average.

## C) GENERAL AVERAGE PROCEDURES

### 1. *General Average security*

Most jurisdictions recognise that the shipowner can exercise a lien (i.e. refuse to allow delivery) on cargo at destination in respect of general average losses sustained by any of the parties to the adventure. The preparation of an adjustment will usually take some time, so that the shipowner will relinquish his lien in return for satisfactory security. Generally, the shipowner or appointed average adjuster will send notices to cargo interests setting out what is required by way of security (the exact procedure may vary slightly according to the jurisdiction(s) involved). The usual security requirements will be as follows:

- (a) Signature to an Average Bond by the owner or receiver of the cargo.
- (b) A cash deposit for an amount estimated by the adjuster to cover likely general average liabilities, usually expressed as a percentage of the invoice value of cargo. It is usual for an Average Guarantee signed by a reputable insurer to be accepted by the shipowner in place of the cash deposit, and the insurer will then take over the handling of the general average aspects of the case through their normal claims procedures.

Variations in the wordings of such forms have arisen largely as a result of market practices and CMI have a working party looking at providing recommended standard wordings, which may form part a future edition of these Guidelines.

The objectives of the security forms currently in use include:

- Providing an acceptable level of security to the shipowner and other parties to the adventure that may be GA creditors.
- Preserving the position under Rule D in respect of defences.
- Encouraging the timely provision of information and evidence to ensure the adjustment process is not delayed.

Both the Average Bond and Guarantee are distinct contracts in their own right, and may, like any contract, be altered by agreement between the parties.

### 2. *Salvage security*

In some circumstances and jurisdictions, and under salvage contracts such as Lloyd's Open Form, the salvor will have a separate right of action against

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*General Average*

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each individual piece of property that is salvaged, once that property is brought into a place of safety. The salvor may therefore exercise a lien on all the cargo at that place and the cargo interests will have to provide two sets of security:

- a) salvage security to salvors at the place where the salvage services end
- b) general average security to the shipowner, at destination.

If there are numerous cargo interests, as on a container ship, interim security may be provided to salvors by the shipowner or charterer to enable the vessel to continue from the place where salvage services ended to destination, where both types of security will then have to be provided.

### 3. *Claim Documentation*

The burden of proof lies with any party wishing to claim general average sacrifices and expenses, and York-Antwerp Rule E includes time limits for submitting claims. After collecting security the average adjuster will need information from cargo interests in order to:

- calculate the contributory value of the cargo.
- make any allowances in general average that are due to cargo.

Cargo interests will generally need to submit the following information to the adjuster:

- a) A copy of the commercial (CIF) invoice. If cargo has been sold on terms other than CIF the freight invoice and insurance premium details may be required.
- b) Details of any damage that has occurred to cargo during the voyage, including:
  - survey reports stating the cause and extent of damage.
  - the cargo insurers' settlement. (If applicable) The damage to cargo will be deducted from the sound value to reach the contributory value; this will determine how much the cargo's general average contribution will be. If any of the damage is allowable as general average (e.g. water damage during firefighting operations) credit will be given in the adjustment.

## D) **ROLE OF THE AVERAGE ADJUSTER REGARDING GENERAL AVERAGE**

### 1. *The effect of the adjustment*

In the majority of jurisdictions the findings of an average adjuster regarding amounts payable by the parties to a maritime adventure are not legally binding, unlike with an arbitration award. The majority of adjustments are accepted by the parties (subject to any Rule D defences) on the basis of the professional standing and expertise of the adjuster.

## 2. *Best practice of average adjusters*

Average adjusters work under different regulatory and professional regimes, however the following elements of best practice appear to be universal and are endorsed by the leading professional associations.

2.1 Irrespective of the identity of the instructing party, the average adjuster is expected to act in an impartial and independent manner in order to act fairly to all parties involved in a common maritime adventure.

2.2 In all cases the average adjuster should:

(a) Give particulars in a prominent position in the adjustment of the clause or clauses contained in the charter party and/or bills of lading that relate to the adjustment of general average or, if no such clause or clauses exist, the law and practice obtaining at the place where the adventure ends. Where conflicting provisions exist, the adjuster should explain in appropriate detail the reason for the basis of adjustment chosen.

(b) Set out the facts that give rise to the general average.

(c) Where the York-Antwerp Rules apply, identify the lettered and/or numbered Rules that are relied upon in making the allowances in the adjustment.

(d) Explain in appropriate detail the choice of currency in which the adjustment is based.

(e) Make appropriate enquiries as to whether any recovery relating to the casualty is being undertaken, and set out the results of those enquiries in the adjustment.

2.3 On request, and when practicable, the adjuster should make available copies of reports and invoices relied upon in the preparation of the adjustment.

## E) **ROLE OF THE GENERAL INTEREST SURVEYOR**

The “General Interest” or “G.A. Surveyor” may be appointed by the Shipowners on behalf of all parties involved in the common maritime adventure, usually only in the larger casualties or where cargo sacrifices are likely to be involved. The Shipowner is responsible for settlement of the G.A. Surveyor’s charges, which are allowed as General Average, but the G.A. surveyor is expected to act in an independent and impartial manner when recording the facts and making recommendations.

The G.A. Surveyor’s role is not to investigate the circumstances leading up to a general average situation (e.g. the cause of a fire) but once the situation exists, his role is generally as follows:

1) To advise all parties on the steps necessary to ensure the common safety of ship and cargo.

2) To monitor the steps actually taken by the parties to ensure that proper regard is taken of the General Interest.

3) To review General Average expenditure incurred and advise the Adjusters as to whether the costs are fair and reasonable.



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*General Average*

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4) To identify and quantify any General Average sacrifice of ship or cargo.

5) To ensure that General Average damage is minimized wherever possible i.e. by reconditioning or sale of damaged cargo. Except in cases of extreme urgency or where communications are difficult, any significant action with regard to cargo (e.g. arranging for its sale at a Port of Refuge) must be taken in consultation with the concerned in cargo.

2. The authority and funds to make disbursements will generally come from the Shipowner, usually via the Master or the Local Agents. The G.A. Surveyor therefore has no authority to order any particular course of action and his role is an advisory one. However, the G.A. Surveyor's impartial position and his influence on the eventual treatment of the expenditure will give his advice considerable weight with the other parties involved.

3. The G.A. Surveyor should also be aware that several other Surveyors may be in attendance on behalf of particular interests and that, for reasons of economy, duplication of reporting should be avoided. In the event of any doubt arising as to the depth of investigation required from the G.A. Surveyor, the Adjuster should be contacted for guidance. The G.A. Surveyor is effectively appointed to act on behalf of the whole General Average community, any of whom are generally entitled to view all his exchanges of correspondence and reports.

## F) YORK-ANTWERP RULES 2016

### 1. *Rule VI -Salvage*

The wording of Rule VI paragraph (b) is new to the York Antwerp Rules 2016. It arises from concerns that, if the ship and cargo have already paid salvage separately (for example under Lloyd's Open Form) based on salvaged values (at termination of the salvors' services), allowing salvage as general average and re-apportioning it over contributory values (at destination) may give rise to additional cost and delays, while making no significant difference to the proportion payable by each party.

A variety of measures to meet these concerns have been considered, ranging from complete exclusion of salvage to using a fixed percentage mechanism. Such measures were found, during extensive CMI discussions to produce inequitable results or were impossible to apply across the range of cases encountered in practice.

It was pointed out that many leading adjusters will, when appropriate, propose to the parties that if re-apportionment of salvage as general average will not produce a meaningful change in the figures or will be disproportionately costly, the salvage should be omitted from the adjustment; it is then up to the parties to decide whether it should be included or not. However, it was considered that a means should be found to make this practice

more universal and to set out express criteria that would help to ensure that the allowance and re-apportionment of salvage as general average (where already paid separately by ship and cargo etc.) would only occur in cases where there was a sound equitable or financial basis for doing so.

The average adjusters will still be required to exercise their professional judgement in applying paragraph (b) because several of the criteria (i-v) that are listed require a view to be taken as to what should be deemed to be “significant” in the context of a particular case. Because of the wide range of cases that the York-Antwerp Rules apply to, it was not considered desirable to offer a fixed definition of how “significant” should be construed, other than to note that the objective of the new clause was to reduce the time and cost of the adjustment process where it is possible to do so.

When assessing whether there is a significant difference between settlements and awards for the purposes of Rule VI(b)(v) the adjuster should have regard only to the basic award or settlement against all salvaged interests before currency adjustment, interest, cost of collecting security and all parties’ legal costs.

## 2. *Rule XXII – Treatment of Cash Deposits*

Under Rule XXII(b) the adjuster is required to hold deposits in a special account constituted in accordance with the law regarding holding client or third party funds that applies in the domicile of the appointed average adjuster.

Unless otherwise provided for by the applicable law, CMI recommends that any special account should have the following features:

- Funds should be held separately from the normal operating accounts of the adjuster.
- Funds should be protected in the event of liquidation or the cessation of the average adjuster’s business.
- The holding bank should provide regular statements that show all transactions clearly.

## **CMI STANDING COMMITTEE ON GENERAL AVERAGE INTEREST RATES**

### **Report to the CMI assembly in New York (2016)**

Following the adoption of the York-Antwerp Rules 2004 by the CMI Conference at Vancouver in June 2004, including the provision in Rule XXI whereby the rate of interest should be fixed by the Assembly of the CMI from year to year, a small Standing Committee on General Average Interest Rates was appointed to investigate the rates of interest applicable to moneys lent by a first class commercial bank to a ship owner of good credit rating.

In April 2016 under the chairmanship of Mr Bent Nielsen (Denmark) the Standing Committee carried out an email review of this. The following took part:

Mr Bent Nielsen – in the chair

Mr Andrew Taylor

Mr Taco van der Valk– Rapporteur

The investigations by the Standing Committee proved again that in current conditions of the banking market a reasonable interest rate for a loan by a first class commercial bank to a ship owner of good credit rating is very difficult to ascertain as to day such ship owners mainly use other sorts of financing. The interest rate to be charged for providing working capital for one year may be very different to an interest rate used for long term asset finance. Working capital in shipping is often provided on the basis of Libor or Euribor (interbank) rates with an add-on to arrive at the bank's own lending rate. In practice, the percentage of the add-on will depend on the bank and the ship owner. The Guidelines given to the CMI Assembly by the CMI Plenary in Vancouver 2004, however, limit the scope to the relationship between first class commercial banks and ship owners of good credit rating. The information collected suggests there is no significant change since 2015 and that we should still look at rates of 12 months Libor USD or 12 months Euribor with and add-on of about 2 %.

On this basis we recommend that the rate of interest should remain 2.5 % for the period 1 January 2017 – 31st December 2017.

However as the indications remain uncertain and as the Assembly will take place very early in the year (even earlier than in 2014 and 2015) we recommend (again) that the Executive Committee should be given authority to change the rate recommended by us now, if our ongoing monitoring of the situation up to 1 January 2017 would show this to be appropriate.

Bent Nielsen  
Chairman

Andrew Taylor

Taco van der Valk  
Rapporteur

**RESOLUTION OF THE ASSEMBLY TAKEN AT  
NEW YORK, 6 MAY 2016  
[AS RECOMMENDED BY THE PLENARY SESSION ON THE  
SAME DATE]**

**CMI GUIDELINES ON GENERAL AVERAGE**

*The Assembly of the Comité Maritime International, duly represented by the delegates representing the National Maritime Law Associations of the states recorded as being in attendance:*

**Takes due note of** the work done by the International Working Group and the International Sub-Committee on General Average in accordance with the mandate given at Beijing in 2012 to carry out a general review of the York-Antwerp Rules and to draft a new set of Rules to meet the requirements of ship and cargo owners and their respective insurers;

**Also takes note** that during their work the International Working Group and International Sub-Committee recommended that CMI should publish non-binding Guidelines to assist commercial interests with general average matters;

**RESOLVES THAT** the Guidelines as drafted in New York by the International Sub-Committee are published on the CMI website;

**FURTHER RESOLVES THAT** in order to monitor the working and effectiveness of the CMI Guidelines, a Standing Committee shall be constituted to consist of:

- A chairman nominated by the Assembly of CMI
- A representative nominated by the International Chamber of Shipping
- A representative nominated by the International Union of Marine Insurance
- Five additional members nominated by the Assembly of CMI;

**FURTHER RESOLVES THAT** the Standing Committee may recommend changes to the Guidelines as circumstances dictate, which shall be submitted to the Assembly of CMI for approval prior to publication.

**RESOLUTION OF THE ASSEMBLY TAKEN AT  
NEW YORK, 6 MAY 2016  
[AS RECOMMENDED BY THE PLENARY SESSION ON THE  
SAME DATE]**

**GENERAL AVERAGE YORK ANTWERP RULES, 2016**

*The Assembly of the Comité Maritime International, duly represented by the delegates representing the National Maritime Law Associations of the states recorded as being in attendance:*

**Takes due note of** the work done by the International Working Group and the International Sub-Committee on General Average in accordance with the mandate given at Beijing in 2012 to carry out a general review of the York-Antwerp Rules and to draft a new set of Rules to meet the requirements of ship and cargo owners and their respective insurers;

**RESOLVES THAT** the new set of Rules as tabled be approved and referred to hereafter as the York Antwerp Rules 2016.



**A COMPARATIVE ANALYSIS OF HOW COURTS IN DIFFERENT  
COUNTRIES DEAL WITH JURISDICTION AND ARBITRATION  
CLAUSES IN BILLS OF LADING AND OTHER SEA CARRIAGE  
DOCUMENTS**

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## JURISDICTION AND ARBITRATION CLAUSES IN BILLS OF LADING AND OTHER SEA CARRIAGE DOCUMENTS IN JAPAN

TOMOTAKA FUJITA\*

### 1. Introduction

Until recently there had been no statutory regulation directly addressing the international jurisdiction of Japanese courts. Therefore, the question of whether the Japanese court had jurisdiction over a specific dispute, including the validity of the jurisdiction and arbitration clauses in bills of lading, has been developed as case law. **Section 2** introduces the relevant cases which represent the current situations in Japan. We see the recent revision of the Code of Civil Procedure in **Section 3**, which does not change the situation very much. **Section 4** shows prospects for the development in the future.

### 2. The 1975 Supreme Court Decision

#### (1) Jurisdiction Clause on Bills of Lading

##### (a) The 1975 Decision (“The Chisadane”)

Although there had been earlier lower court cases on the issue,<sup>1</sup> *the Supreme Court decision of November 28, 1975*<sup>2</sup>, known as “The Chisadane,” is regarded as the leading case that sets forth the general conditions for the jurisdiction clause in bills of lading being effective.

The case involved in a bill of lading issued in connection with an ocean shipment of crude sugar by a ship (Chisadane) from Santos, Brazil, to Osaka, Japan. The goods were damaged in transit. The insurer who compensated the bill of lading holder brought a lawsuit against the carrier. A jurisdiction clause in the bill of lading stated: “*Any and all suits under this contract of carriage*

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<sup>1</sup> See, e.g., Tokyo District Court, October 17, 1967, *Kakyu Saibansho Minji Hanreishu* (Lower Court Civil Case Reports, 1967), Vol. 18, p.1002, Kobe District Court, April 14, 1970, *Hanrei Taimuzu* No.288, p.283. They are mostly in line with the 1975 Decision.

<sup>2</sup> *Saiko Saibansho Minji Hanreishu* (Supreme Court Civil Case Reports, 1975), Vol.29, p. 1554. A translation is available in *Japanese Annual of International Law*, No. 20, pp. 106-118 (1976). The citation of the judgment in this article is based on the translation.



*shall be brought before the court of Amsterdam and no other court shall have jurisdiction over any other suit unless the carrier brings such suit before a court of other jurisdiction or voluntarily accepts the jurisdiction of such court.*" The Supreme Court of Japan held that the jurisdiction clause was valid and dismissed the suit, stating that the Japanese court had no jurisdiction over the case.

In its ruling, the Court specified the following four conditions for the exclusive jurisdiction clause to be valid.

(i) *The formalities for the agreement of international jurisdiction shall be satisfied if at least a court of a certain country is expressly designated in the document prepared by either of the parties and if the existence of such an agreement between the parties and the contents thereof are explicit.*

Note that the Court requires a document that expressly designates a court of a certain country but does not require the signature of the both parties. If it did, all jurisdiction clauses on bills of lading would be invalid since there is no signature of the shipper or the holder on bills of lading.

(ii) *The case is not subject to the exclusive jurisdiction of Japan.*

No explanation would be necessary for the second condition. If a Japanese court has exclusive jurisdiction, there is no room for a jurisdiction clause designating a foreign court.

(iii) *The designated foreign court has jurisdiction over such cases under the laws of that foreign country.*

Although the third condition may also seem to be a matter of course, it needs a clarification. It requires that the designated court has jurisdiction under the laws of that foreign country, but it does not require that the court recognizes jurisdiction clauses in bills of lading as valid.

(iv) *The agreement of exclusive international jurisdiction designating the court that has jurisdiction over the general forum of the defendant as the court of first resort having exclusive jurisdiction over the case shall be deemed valid in principle, unless such an agreement is very unreasonable and against the law of public policy.*

Finally, the Court recognizes that there is a possibility for an exclusive jurisdiction clause to be invalid because it is "very unreasonable and against the law of public policy." In this particular case, the Court did not see such exceptional circumstances.<sup>3</sup>

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<sup>3</sup> One might wonder if an exclusive jurisdiction clause is "very unreasonable and against the law of public policy" if the applicable law under the designated foreign court may not apply the Hague-Visby Rules or the corresponding national legislation. Japanese courts may take into account of such a fact as one of the factors that constitute "very unreasonable and against the law of public policy". In *Chisadane*, Osaka High Court explicitly referred to the fact that the applicable law was Dutch law and Netherlands, as well as Japan, was a Hague-Rule country although the Supreme Court is silent on this fact. At the same time, the

One might wonder if an exclusive jurisdiction clause is against the Hague and the Hague-Visby Rules Article III (8), which prohibits any bill of lading provision that relieves the carrier of liability. The Supreme Court does not see that the jurisdiction clause in itself did not relieve the liability even if the holder of bills of lading should bring an action in foreign court, which might cause some burden for him or her.

(b) Jurisdiction Clause Which Is “Very Unreasonable and Against The Law of Public Policy”

Subsequent cases, without exception, follow the framework established by the 1975 Decision. Although most of them held the exclusive jurisdiction clause on bills of lading to be valid, one exceptional case denied it. *Tokyo District Court, September 13, 1999*<sup>4</sup> decided that the jurisdiction clause in a bill of lading was invalid.

In this case, a bill of lading was issued in connection with a shipment of wood from Malaysia to Japan, and it included an exclusive jurisdiction clause stating that only courts in Malaysia had jurisdiction over any dispute arising out of the contract of carriage. The carrier delivered goods to a person who did not possess the bill of lading. The plaintiff, the holder of the bill of lading, brought an action in the Tokyo District Court in Japan seeking the delivery of the goods or damages caused by the misdelivery.

The court, based on the framework of 1975 Supreme Court Decision, decided the jurisdiction clause was held invalid as “very unreasonable and against the law of public policy” under the specific circumstances of the case. The court found (1) the dispute related to the delivery of the cargo in Japan, (2) many relevant parties involved were Japanese who lived in Japan, and (3) the relevant facts in the dispute had nothing to do with Malaysia.

(c) Jurisdiction Clause and Himalaya Clause

While some Himalaya clauses explicitly refer to the jurisdiction clause<sup>5</sup>, others do not. In the latter case, *Tokyo District Court, June 4, 2010* (unreported case) did not allow the agent of the carrier to rely on the jurisdiction clause contained in the bill of lading pursuant. The court observed that the Himalaya clause which gave the agents of the carrier “*exoneration, defense and limitation of liability applicable to the carrier*” did not cover the agreement on jurisdiction.

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author thinks that the mere fact that designated foreign court will or may not apply the Hague-Visby Rules or the corresponding national legislation alone does not automatically make the jurisdiction clause “very unreasonable and against the law of public policy”. There has been no case which made jurisdiction unenforceable only for that reason.

<sup>4</sup> *Kaijiho Kenkyu Kaishi (Maritime Law Review)*, No. 154, p.89 (2000).

<sup>5</sup> See, Fukuoka District Court Kokura Branch, March 17, 2006 (unreported case) and Kyoto District Court January 24, 2007 (unreported case).

(2) *Arbitration Clause Incorporated by Reference to the Clause in the Charterparty*

Arbitration clauses are usually used in non-liner transport. Although their validity can be decided in the similar manner as jurisdiction clauses, there is a problem unique to an arbitration clause. Bills of lading are often issued with a clause incorporating the terms contained in the underlying charterparty by reference. An incorporation is sometimes made in such a general manner as simply providing “*all the terms and conditions of the charterparty are herewith incorporated.*” Does an arbitration clause incorporated by reference bind the holder? Since the holder of the bill of lading does not always have a chance to confirm the terms of a charterparty, he or she may not have an opportunity to see the exact contents of the arbitration clause if incorporation is made in this manner. Article 76(2) of the Rotterdam Rules is drafted to meet such a concern.<sup>6</sup>

It is not completely clear how such an incorporation is treated under Japanese law. There was one well-known old case. *Osaka District Court, May 11, 1959*<sup>7</sup> held that an arbitration clause incorporated by reference was valid. In this case, the arbitration clause in the charterparty provided “*any dispute arising out of this charterparty is referred to arbitration in London.*” The incorporation provision in the bill of lading simply said, “[Charter party, dated 27<sup>th</sup> January 1958 ...,] *all the terms, conditions, and exceptions contained in which Charter are herewith incorporated.*” The holder of the bill of lading brought an action in the Osaka District Court in Japan against the carrier, claiming losses caused by damage to the goods. The court dismissed the claim stating that the arbitration clause incorporated by reference effectively prevented the bill of lading holder from bringing the suit against the carrier in Japan.

Many commentators criticized the decision, and it is not completely clear if the courts would reach the same conclusion in a similar case today. No Supreme Court decision addresses this point.

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<sup>6</sup> The Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules) Article 76(2) provides: “Notwithstanding paragraph 1 of this article, an arbitration agreement in a transport document or electronic transport record to which this Convention applies by reason of the application of article 7 is subject to this chapter unless such a transport document or electronic transport record:

(a) Identifies the parties to and the date of the charterparty or other contract excluded from the application of this Convention by reason of the application of article 6; and

(b) Incorporates by specific reference the clause in the charterparty or other contract that contains the terms of the arbitration agreement.”

<sup>7</sup> *Kakyu Saibansho Minji Hanreishu* (Lower Court Civil Case Reports, 1959), Vol. 10, p. 970.

### 3. *Statute*

The revision of the Code of Civil Procedure in 2011<sup>8</sup> included provisions concerning the international jurisdiction of Japanese courts. Article 3-7 of the revised code provides the validity of the choice of court agreement as follows:

“Article 3-7 (Agreement on Jurisdiction)

(1) The parties may determine, by an agreement, the country in which they may file an action with a court.

(2) The agreement set forth in the preceding paragraph shall not become effective unless it is made with respect to an action based on certain legal relationships and made in writing.

(3) If the agreement set forth in paragraph (1) is made by means of an electromagnetic record (meaning a record made in an electronic form, a magnetic form or any other form not recognizable to human perception, which is used in information processing by computers; the same shall apply hereinafter) in which the content of such agreement is recorded, the provisions of the preceding paragraph shall be applied by deeming such agreement to have been made in writing.

(4) An agreement to the effect that an action may be filed only with a court of a foreign country may not be invoked if such court is unable to exercise its jurisdiction by law or in fact.

(5) An agreement as set forth in paragraph (1) which covers a dispute on a consumer contract that may arise in the future shall be effective only in the following cases:

(i) Where the agreement provides that an action may be filed with a court of a country where a consumer had domicile at the time of conclusion of a consumer contract (except in the case set forth in the following item, any agreement to the effect that an action may be filed only with a court of such country shall be deemed to be providing that it does not preclude the filing of an action with a court of any other country).

(ii) Where a consumer, in accordance with the agreement, has filed an action with a court of the country determined by the agreement, or where a business operator has filed an action with a court of Japan or a foreign country and the consumer has invoked the agreement.

(6) An agreement as set forth in paragraph (1) which covers an individual civil dispute in labor relations that may arise in the future shall be effective only in the following cases:

(i) Where the agreement has been made at the time of termination of a labor contract, and it provides that an action may be filed with a court of the country in which the place of provision of labor as of that time is located (except in the case set forth in the following item, any agreement to the effect that an action may be filed only with a court of such country shall be deemed to be

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<sup>8</sup> Law No. 109 of 1996, amended by Act No. 36 of 2011.

providing that it does not preclude the filing of an action with a court of any other country).

(ii) Where a worker, in accordance with the agreement, has filed an action with a court of the country determined by the agreement, or where a business operator has filed an action with a court of Japan or a foreign country and the worker has invoked the agreement.”

The provision is essentially consistent with the 1975 Decision<sup>9</sup> and there is no special rule *specifically* regulates the validity of jurisdiction or arbitration clauses in bills of lading or other transport documents. There are special provisions for the cases involving consumer or the labors but they are not usually applicable to bills of lading. In this sense, the 1975 Decision still remains as a precedent today.

#### 4. *Future Developments*

Finally, let us see the possible future developments.

##### (1) *A Possible Change in Statutes or Case Law*

Since the Code of Civil Procedure was revised only five years ago, there is no impetus for Japanese legislators to amend the rules on international jurisdiction in the near future. Nor can we expect a drastic change in case law. The framework set forth by Supreme Court in the 1975 Decision has been and will be stable. However, there may be developments for those issues where ambiguities remain, including the questions of when an exclusive jurisdiction clause is regarded as “very unreasonable and against the law of public policy” or whether and to what extent arbitration clauses incorporated by reference to charterparty provisions are valid.

##### (2) *Response to the Rotterdam Rules*

How about the Rotterdam Rules? Judging from the negotiations in the UNCITRAL Working Group during the drafting of the Rotterdam Rules, it is very unlikely that the Japanese government will choose to opt-in Chapters 14 (Jurisdiction) and 15 (Arbitration) upon the ratification.<sup>10</sup> However, this does not necessarily mean that the Rotterdam Rules have no influence. For example, Article 76(2) of the Rotterdam Rules regulates the effect of an arbitration clause incorporated by reference. If many states choose to opt-in Chapter 15 and Article 76 becomes a globally accepted rule, it might have some influence on Japanese courts. Then, the courts would reach a different conclusion than *Osaka District Court, May 11, 1959*. Such indirect influence by the Rotterdam Rules should not be underestimated.

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<sup>9</sup> For the 2011 Revision of the Code of Civil Procedure, see, Dai Yokomizo, The New Act on International Jurisdiction in Japan: Significance and Remaining Problems, *Zeitschrift für Japanisches Recht [Journal of Japanese Law]*, No. 34 (2012), p. 95.

<sup>10</sup> The provisions of these chapters bind Contracting States if and only if they declare that they will be bound by them. (Articles 74 and 78).

## **CLAIMS HANDLING UNDER ROTTERDAM RULES**

**CHESTER D. HOOPER**

### *Introduction*

This article will outline the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules)<sup>1</sup> for the use of claims adjusters.

The Rotterdam Rules will not change the basic concepts that have governed contracts for the carriage of goods by sea for more than 100 years. Those concepts basically require an ocean carrier to exercise due diligence to make a ship, including her crew, seaworthy and require cargo interests to prepare the cargo properly for an ocean voyage and label the cargo properly.

Cargo interests would be liable for damage caused by a breach of their duties and the carrier would be liable for damages caused by the breach of its duties. If damage was not caused by a breach of either party's duties, each party would drop hands and suffer its own losses.

The basic duty of the carrier to exercise due diligence remains in the Rotterdam Rules. The Rotterdam Rules also include most of the Hague Rules, COGSA, and Hague/Visby Rules<sup>2</sup> specific defenses.

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The views expressed in this paper are the personal views of the author. They are not necessarily the views of the MLA or of the United States. The author wishes to thank Professor Michael F. Sturley of the University of Texas School of Law and Richard A. Corwin, the former Regional Director – Asia, Gard Group, for reviewing a draft of this article and offering helpful suggestions.

<sup>1</sup> This article will refer to the draft Convention either as the "Convention" or as the "Rotterdam Rules."

<sup>2</sup> The Hague Rules, International Convention for the Unification of Certain Rules Relating to Bills of Lading, signed at Brussels, Aug. 25, 1924, 51 Stat. 233, 247, 120 L.N.T.S. 155 ("Hague Rules"), reprinted in 6 Benedict on Admiralty, Doc. No. 1-1 (7th rev. ed. 2007); the Carriage of Goods by Sea Act (COGSA), Ch. 229, 49 Stat. 1207 (1936), reprinted in note following 46 U.S.C. § 30701 (formerly codified as 46 U.S.C. App. §§ 1300, et seq.); and the Hague/Visby Rules, Protocol to Amend the International Convention for the

The Rotterdam Rules appear at first glance to be far more complicated than the various Hague Rules, but they are not. The Rotterdam Rules are longer than their predecessors in part to clarify and thus to reduce litigation in several areas in which the various Hague Rules have generated extensive litigation. The Rotterdam Rules are also longer to correct mistakes that courts have made over the years in interpreting the various Hague Rules. In addition, the Rotterdam Rules include a chapter to clarify which party has control of the cargo and thus may give instructions to the carrier. The Rotterdam Rules also will govern not only contracts evidenced by a bill of lading or a similar document of title, but will govern contracts evidenced by various documents now in use or which may be used in the future. The Rotterdam Rules will apply to contracts evidenced by Electronic Records, and will even apply to contracts not evidenced by any paper document or Electronic Record.

The Rotterdam Rules will not be limited to the sea leg of the carriage; they will apply with some exceptions to the entire door-to-door multimodal carriage.

#### *Changes from the various Hague Rules*

The Rotterdam Rules will not exonerate a carrier from liability for the loss or damage were caused by an error in navigation or management. They will also require the carrier to exercise due diligence throughout the voyage, not only at and before the start of the voyage. The burdens of proof assigned to the carrier have been made more reasonable and have been clarified. Shipper's load and count clauses will be upheld. The carrier will not be liable for economic damages caused by delay unless the carrier agrees to deliver by a certain date. Cargo shippers will be liable for damages caused by dangerous cargo. Some, but not all, of the other Rotterdam Rules changes will be included in this outline.

It is hoped that the following outline may help guide claims handlers through the Rotterdam Rules.

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Unification of Certain Rules of Law Relating to Bills of Lading, Signed at Brussels on Aug. 25, 1924, Feb. 23, 1968, 1412 U.N.T.S. 128, reprinted in 6 Benedict on Admiralty, Doc. No. 1-2 (7th rev. ed. 2007). When referred to together they will be referred to as the "various Hague Rules."

*Scope of Rotterdam Rules***They do not apply to:**

- Article 6 {
- Charter parties
  - Other contracts for the use of a ship or any space on a ship

**They do apply to:**

- Article 5 {
- Contracts for carriage, even contracts not evidenced by Transport Documents or Electronic Records<sup>3</sup> in which
    - the place of receipt and place of delivery are in different states; and
    - the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different states; if
    - one of the following places is in a Contracting state:
      - ♦ the place of receipt
      - ♦ the port of loading
      - ♦ the place of delivery, or
      - ♦ the port of discharge
- Article 7 {
- A Transport Document or an Electronic Record between a party to a charter party and a third party that is not a party to the charter party

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<sup>3</sup> A "Transport Document" or "Electronic Record" includes, but is not limited to, a bill of lading or similar document of title. Transport Documents also include, but are not limited to, sea waybills and other writings that evidence contracts for carriage. "Electronic Records" refer to the electronic equivalent of these paper documents. – Article 1 (14) (18).



*Where may the carrier be sued by cargo claimants?*<sup>4</sup>

Article 66

- In a competent court in one of the following:
  - The domicile of the carrier;
  - The place of receipt agreed in the contract of carriage;
  - The place of delivery agreed in the contract of carriage; or
  - The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship
- A court designated by the parties (in the Transport Document)
  - Cargo may, but is not required, to choose the place designated in the Transport Document or Electronic Record.

Article 67

- Parties to a Volume Contract may specify in the Volume Contract where suit must be filed. Any places so chosen in the Volume Contract will be upheld between the parties to the Volume Contract as the exclusive forum.
- The place chosen in the Volume Contract may bind a third party holder of a Transport Document or Electronic Record issued by a party to the Volume Contract if:
  - The place is an Article 66 place.
  - the choice of forum agreement is contained in the Transport Document or Electronic Record
  - the third party holder of the Transport Document or Electronic Record is given timely and adequate notice of the exclusive choice of court clause; and
  - the law of the court where suit is initiated recognizes that the third party will be bound.

<sup>4</sup> The choice of court agreement articles are found in Chapter 14 while the arbitration articles are found in Chapter 15. Chapter 14 and Chapter 15 are "Opt-In Chapters." If a nation does not opt into Chapter 14 or Chapter 15, that chapter will not apply to that nation. Nations may opt into Chapter 14 or 15 or both when nations ratify the Convention or at a later time.

*Will the claim be arbitrated and where will it be arbitrated?*

- Article 75 {
- These provisions are almost identical to the jurisdiction provisions.
  - A claimant may chose an Article 66 place for arbitration if the Transport Document contains an arbitration agreement even though the arbitration agreement specifies another place for arbitration.
  - It is doubtful that any carrier will include an arbitration agreement in its Transport Document or Electronic Record. If it did include an arbitration agreement, the carrier could not predict where or under which procedure it might have to arbitrate.

*Arbitration clauses in charter parties*

- Article 6 {
- If a claimant was a party to a charter party, any place could be chosen for arbitration. The Rotterdam Rules will not govern charter parties nor have earlier conventions, such as the various Hague Rules or the Hamburg Rules, governed charterparties. Parties to charter parties have complete freedom to contract including deciding where and how disputes will be resolved.

*Charter party arbitration clauses are binding on third party holders*

- Article 76 {
- Charter Party arbitration clauses are binding on third party holders of charter party Transport Documents or Electronic Records if:
    - The Transport Document or Electronic Record identifies the charter party by reference to the parties to the charter party and the date of the charter party.
    - Incorporates by specific reference the clause or clauses that contain the terms of the arbitration agreement.

*Time to start suit or arbitration*

- Article 62 {
- Two years from the day on which the carrier has delivered the goods.
  - If no goods have been delivered or if only part of the goods have been delivered from the last day on which the good should have been delivered.
  - Even after the two years have expired one party may rely on its claim as a defense for the purpose of set-off against a claim by the other party.

*Extension of time for suit*

- Article 63 {
- The party against which a claim is made may, during the running of the period, extend the time by declaration to the claimant. Further extensions may be given.

*Action for indemnity*

- Article 64 {
- An action for indemnity may be started after the two years described in Article 62 if the proceedings for indemnity are started within the later of:
    - The time allowed by the law that applies in the jurisdiction where the indemnity proceedings are started; or
    - 90 days after the earlier of the time the person seeking indemnity has either
      - ◆ Settled the claim, or
      - ◆ Has been served with process in the action for which the person seeks indemnity.

*Package or weight limit*

- Article 59 {
- 875 SDRs<sup>5</sup> per package; or
  - 3 SDRs per kilo, whichever is greater.<sup>6</sup>
  - The limitation package is the package or shipping unit enumerated in the contract as packed in or on a container, pallet, or similar article of transport or vehicle.
- If the package or shipping unit in or on the article of transport or vehicle is not enumerated, then the container, pallet or similar article of transport or vehicle is the limitation package or unit.
- The SDR will be converted into the national currency of the State as of the date of judgment or award or on a date agreed by the parties.

*Limitation of liability for economic delay*

- Article 60 {
- Liability for economic loss due to delay (if the carrier agreed to deliver by a certain date) is limited to 2.5 times the freight payable for the goods delayed. The total due could not, however, exceed the package or weight limit set forth in Article 59.

<sup>5</sup> Special Drawing Right of the International Monetary Fund.

<sup>6</sup> As of April 6, 2016, 1 SDR was valued at U.S. \$1.40594. U.S. COGSA limits a carrier's liability to \$500 per package or for goods not shipped in packages, per customary freight unit (the unit on which the freight charge is based. The Hague Visby Rules limit a carrier's liability to 666.67 SDRs per package or 2 SDRs per kilogram, whichever is greater. The Hamburg Rules limit a carrier's liability to 835 SDRs per package or 2.5 SDRs per kilogram, whichever is greater.

*Loss of limitation of liability*

- Article 61 {
- Neither the Carrier nor the Maritime Performing Party may limit its liability to the package or weight or freight as described in Article 59 and/or 60
  - If the claimant proves that the loss, damage, or delay:
    - Was attributable to a personal act or omission of the person claiming a right to limit;
    - Done with the intent to cause such loss, or
    - Recklessly and with such knowledge that such loss would probably result.

*Delay*

- Article 21 {
- The Carrier is only liable for economic<sup>7</sup> damages caused by delay if the Carrier agrees to deliver the goods by a certain time and fails to do so.

*Responsibility or lack of responsibility for quantity of goods description in the transport document or electronic record*

- Article 36 {
- Condition of the Goods
    - Unless the carrier clauses the Transport Document or Electronic Record, the issuance of the Transport Document or Electronic Record will constitute an indication by the Carrier that "[a] reasonable external inspection of the goods as packaged at the time the shipper delivers them to the carrier or a performing party . . ." and any additional inspection that the Carrier or Performing Party may conduct before issuing the Transport Document or Electronic Record, indicated that the goods were in good external condition.

<sup>7</sup> The Carrier could be liable for physical damage caused by delay. If for example, a delay caused a cargo of bananas to decay, the Carrier would be responsible for the damage if the delay were due to causes for which the carrier would be liable. If, for example, the delay were due to an engine breakdown caused by a failure to exercise due diligence to keep the engine in seaworthy condition, the Carrier would be liable for physical damage caused by delay in the same way it would be held liable for any damage caused by a failure to exercise due diligence. If on the other hand, the Carrier exercised due diligence to keep the engine in seaworthy condition, and despite that exercise, the engine broke down because of a latent defect that could not be fixed at sea, the Carrier would not be liable in the same way the carrier would be exonerated from other physical damage caused by a latent defect. Article 21.

*Quantity of the goods*

## Article 40

- The carrier may clause the Transport Document or Electronic Record to indicate that the carrier has not checked the quantity of goods by counting the goods or weighing the goods.
- The clause will be upheld if the carrier has not, in fact, checked the quantity of goods delivered to the carrier or the carrier reasonably doubts the accuracy of the quantity description
- The carrier may clause a Transport Document or Electronic Record for the quantity of goods received in a closed container or vehicle if:
  - Neither the carrier nor a performing party has actually inspected the goods inside the container or vehicle; and
  - Neither the carrier nor performing party had actual knowledge of the contents before issuing the Transport Document or Electronic Record.
- A carrier may clause a Transport Document or Electronic Record to indicate that it had not checked the weight of the goods as furnished by the shipper if:
  - Neither the carrier nor the performing party weighed the container or vehicle and the carrier had not agreed with the shipper to weigh the container or vehicle and to include the weight in the contract particulars; or
  - Checking the weight was not physically practicable or commercially reasonable.

*Evidentiary effect of contract particulars*

Article 41

The quantity description of the goods in a Transport Document or Electronic Record claused in compliance with Article 40 will not constitute prima facie evidence of the goods delivered to the carrier or performing party.

Unless the Transport Document or Electronic Record is claused in compliance with Article 40, the quantity description will constitute prima facie evidence of the goods received.

- The carrier may, except as described below, produce evidence to rebut that prima facie case.
  - The carrier could, for instance, produce testimony from a witness who was present at loading to prove that the quantity of goods described in the Transport Document or Electronic Record to have been in the container was actually not loaded into the container.
- A carrier that has not claused the Transport Document or Electronic Record may not rebut the prima facie effect of the quantity description if:
  - A negotiable Transport Document or Electronic Record has been transferred to a third party acting in good faith, or
  - A non-negotiable Transport Document or Electronic Record that indicates that it must be surrendered to obtain delivery of the goods has been transferred to the consignee.
  - The Carrier has furnished the description.
  - The description consists of the number, type, and identifying numbers of a container, but not the container seal number.

*Burdens of proof and list of defenses*

Article 17

- Claimant has the burden to prove receipt by the carrier in good condition and delivery by the carrier in damaged condition or that the goods were lost.
- If the Claimant has carried the previous burden, the carrier bears the burden to prove that the loss or damage was caused without its fault or that it was caused by one of the exceptions.
- If the Carrier has carried the previous burden, the cargo interests bear the burden to prove that a fault of the carrier helped cause the loss or damage. Cargo interests might, for example argue that an unseaworthy condition contributed to the loss or damage or that the carrier did not take proper care of the cargo.

## Article 17

- Only if the Carrier and the Claimant have carried their previous burdens, both parties would bear an equal burden to prove the percentage of fault that should be attributed to each cause and thus to each party.
  - Example: If improper ventilation (Carrier's fault) combined with insufficient packaging (shipper's fault and an exception from liability for the carrier), the carrier would try to place as much blame as possible on the insufficient packaging and the cargo interests would try to place as much blame as possible on the improper ventilation. If the trier of fact decided that the insufficient packaging was 60% to blame and the improper ventilation was 40% to blame, the cargo interests would recover 40% of their damages from the carrier.
- Loss of Error in Navigation or Management:
  - The list of exceptions no longer includes the defense of error in navigation or management and the fire defense is slightly weakened. A new defense is added for loss or damage caused by reasonable measures taken to avoid or attempt to avoid damage to the environment. The remaining defenses read as follows:
    - ◆ 3. The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:
      - (a) Act of God;
      - (b) Perils, dangers, and accidents of the sea or other navigable waters;
      - (c) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions;
      - (d) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in article 18;<sup>8</sup>

<sup>8</sup> Article 18 includes any performing party, the master or crew of the ship, employees of the carrier or performing party or any other person that performs or undertakes any of the carrier's obligations if that person acts either directly or indirectly at the carrier's request or under the carrier's supervision and control.



Article 17

- (e) Strikes, lockouts, stoppages, or restraints of labour;
- (f) Fire on the ship;
- (g) Latent defects not discoverable by due diligence;
- (h) Act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to article 33 or 34;<sup>9</sup>
- (i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 13, paragraph 2,<sup>10</sup> unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee;
- (j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
- (k) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;
- (l) Saving or attempting to save life at sea;
- (m) Reasonable measures to save or attempt to save property at sea;
- (n) Reasonable measures to avoid or attempt to avoid damage to the environment; or
- (o) Acts of the carrier in pursuance of the powers conferred by articles 15 and 16.<sup>11</sup>

<sup>9</sup> Articles 33 and 34 refer to the obligations and liabilities of the documentary shipper and the shipper. Those duties include the duty to provide certain information to the carrier relating to the goods. That information is described in Article 55.

<sup>10</sup> Article 13, para. 2 permits the carrier and the shipper to agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper, or the consignee.

<sup>11</sup> Articles 15 and 16 describe what the carrier or the performing party may do if the goods are dangerous or reasonably appear likely to become dangerous. The carrier may take reasonable measures including the destruction of the goods.

*Door-to-door nature of convention*

- Article 1 (1), 5, 12
- The carrier will be responsible for the part of the carriage it contracted to perform.
    - If it contracted to carry the cargo door-to-door, it will be responsible for the entire door-to-door carriage.
    - If the carrier agreed to carry the cargo only for part of the carriage, i.e. port-to-port, it will be responsible only for that part of carriage.
- 
- Article 26
- The carrier will be governed by same law throughout door-to-door multimodal carriage except while being carried in an area governed by the CMR or CIM/COTIF.
    - For loss or damage caused by an event that occurred solely before loading on a ship or solely after discharge from a ship.
    - Although Article 26 does not identify the party that bears the burden to prove where the loss or damage was caused, the requirement that the loss or damage occurred solely before loading or solely after discharge implies that the party that wants the CMR or CIM/COTIF to apply would bear the burden to prove that the cause of loss or damage occurred during European inland transportation.

*Performing parties*

- Article 1(7), 19
- Maritime performing parties assist the carrier to perform the carriage during the port-to-port part of the carriage.
    - The Rotterdam Rules apply with the force of law to Maritime Performing Parties – i.e.
      - ◆ Ocean carriers
      - ◆ Stevedores and terminal operators in the port area.
      - ◆ Lashing companies that work in the port area.
      - ◆ Security companies that work in the port area.
      - ◆ Trucks and trains that operate only within ports.
      - ◆ Any other party that helps the carrier perform the contract of carriage throughout the port-to-port stage of the carriage.

Article  
6 (a)

- Non Maritime Performing Parties
  - Non Maritime Performing Parties assist the carrier to perform the carriage beyond the port-to-port part of the carriage.
  - The Rotterdam Rules do not apply with the force of law to Non Maritime Performing Parties.
  - A trucking company or railroad that moves cargo into or out of a port is a Non Maritime Performing Party.
  - A party that helps perform the Contract of Carriage outside the port is a Non Maritime Performing Party.
  - Non Maritime Performing Parties are not entitled to the Rotterdam Rules' defenses or limitations as a matter of law.
  - ◆ They may incorporate the terms of the Rotterdam Rules into their contracts.
  - ◆ They may also attempt to take advantage of the Carrier's Rotterdam Rules' defenses and limitations through the Himalaya Clause in the Contract of Carriage.
    - The law in the United States at this time is unsettled. A Non Maritime Performing Party might be governed by United States inland transportation law. That law might govern a direct action by cargo interests against the non maritime performing parties with the force of law and take precedence over a contractual incorporation of the Rotterdam Rules through a Himalaya Clause.

*Volume contracts*

Volume contracts are similar to Service Contracts that have been in use in the United States since the Ocean Shipping Reform Act of 1998 permitted certain terms in service contracts to remain confidential.<sup>12</sup> Parties to present U.S. service contracts have more freedom of contract than will parties to volume contracts under the Rotterdam Rules. Service contracts are not governed by COGSA, because they are not bills of lading or similar documents of title. Thus, parties to current service contracts have complete freedom of contract. Volume contracts will be governed by the Rotterdam Rules, but will be able to derogate to a great extent from the Rotterdam Rules if certain conditions (discussed below) are met.

Both shipper interests and carrier interests wanted to start to negotiate Volume Contracts from the terms of the Rotterdam Rules rather than from a blank sheet of paper. They wished, however, to be able to exercise some freedom of contract by derogating from certain terms from the Rotterdam Rules.

Article  
1(2)

- Definition: Volume contracts are defined in the Rotterdam Rules as:
  2. “Volume contract” means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.

Parties to volume contracts may not derogate from the following articles:

Article 14

- The carrier’s obligation to:
  - (a) Make and keep the ship seaworthy;
  - (b) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage. . .

<sup>12</sup> U.S.C. § 40502.

- Article 29 { ° The shipper's obligation to provide information, instructions and documents concerning the proper handling of the cargo, including any precautions that should be taken.

- Article 32 { ° Both parties' obligations concerning dangerous cargo.

- Article 61 { • Any act by the carrier that would cause it to lose the benefit of a limitation of liability pursuant to Article 61. (The carrier may not personally act with intent to cause damage or recklessly with knowledge that the loss that occurred would probably result from the reckless act.)

The parties may derogate from other Rotterdam Rules in volume contracts if the following conditions are met.

- Article 80 (2) { ° The volume contract must contain a prominent statement that it does derogate.  
° The volume contract must be individually negotiated or the sections of the volume contract containing the derogations must be prominently specified.  
° The shipper must be given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with the Convention without any derogation.

- Article 80(5) { • Extension of derogated terms to third parties.  
° Third parties will be bound to any derogated term only if they expressly consent to be bound.

*Choice of court or arbitration agreements in volume contracts*Article  
67 and 75

- An exclusive choice of forum clause or arbitration agreement in the volume contract will be upheld if it clearly states the names and addresses of the parties and it is either individually negotiated or contains a prominent statement that it contains an exclusive choice of forum agreement or arbitration agreement and specifies the section of the volume contract that contains the agreement.
- A third party will be bound to the choice of forum clause or arbitration agreement in a volume contract if the choice of court agreement or the arbitration agreement is one of the places designated in Article 66(a).<sup>13</sup> The choice of forum agreement or the arbitration agreement must be contained in the transport document or electronic transport record.
- The person bound by the agreement is given timely and adequate notice of the court where the action shall be brought or the place where the arbitration will be conducted.<sup>14</sup>
- The law of the court in which suit is filed recognizes that the party may be bound by the exclusive choice of court agreement or arbitration agreement.

<sup>13</sup> Article 66(a) lists the following places:

- (i) The domicile of the carrier;
- (ii) The place of receipt agreed in the contract of carriage;
- (iii) The place of delivery agreed in the contract of carriage; or
- (iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship; . . .

<sup>14</sup> This notice might consist of a prominent clause on the face of the Transport Document or Electronic Record.

## ARBITRATION & JURISDICTION CLAUSES IN AUSTRALIA

PROFESSOR SARAH DERRINGTON\*

### *1. Background and history*

1.1 Since Federation, Australia has had in place legislation modelled on the US Harter Act. Its earliest iteration was the *Sea-Carriage of Goods Act 1904* (Cth) which provided in s 6:

All parties to any bill of lading or document relating to the carriage of goods from any place in Australia to any place outside Australia shall be deemed to have intended to contract according to the laws in force at the place of shipment, and any stipulation or agreement to the contrary, or purporting to oust or lessen the jurisdiction of the Courts of the Commonwealth or of a State in respect of the bill of lading or document, shall be illegal, null and void, and of no effect.

This provision was enacted specifically to ensure that carriers could not avoid liability by using English choice of law and forum clauses (Commonwealth, Parliamentary Debates, Senate 23 November 1904, 7286).

1.2 The adoption of the Hague Rules in 1924 led Australia to revise its legislation and, in 1924, Australia enacted the *Sea-Carriage of Goods Act 1924* (Cth). The 1924 Act extended the jurisdictional protection that had been provided in relation to the outbound carriage of goods by its predecessor to inward carriage. Section 9 provided:

(1) All parties to any bill of lading or document relating to the carriage of goods from any place in Australia to any place outside Australia shall be deemed to have intended to contract according to the laws in force at the place of shipment, and any stipulation or agreement to the contrary, or purporting to oust or lessen the jurisdiction of the Courts of the Commonwealth or of a State in respect of the bill of lading or document, shall be illegal, null and void, and of no effect.

(2) Any stipulation or agreement, whether made in the Commonwealth or elsewhere, purporting to oust or lessen the jurisdiction of the Courts of the Commonwealth or of a State in respect of any bill of lading or document relating to the carriage of goods from any place outside

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Australia to any place in Australia shall be illegal, null and void, and of no effect.

The purpose of this section was to ensure that cargo claimants had access to Australian courts and, in *Compagnie Des Messageries Maritimes v Wilson* (1954) 94 CLR 577, 538 Dixon CJ observed that s 9 was ‘expressed in the strongest words’ and rendered ‘any stipulation or agreement falling within its terms illegal, null, void and of no effect’.

1.3 The development of yet further international regimes in the form of the Visby Protocol and the Hamburg Rules led to yet another iteration of Australia’s carriage of goods by sea liability regime, this time in the form of the *Carriage of Goods of Sea by Act 1991* (Cth) (COGSA 91) as amended by the *Carriage of Goods of by Sea Amendment Act 1997* and the *Carriage of Goods by Sea Regulations 1998* (No 1) and (No 2). The combined effect of those various legislative instruments is s 11 of COGSA 91 as it exists today.

## 2. *Overveiw of current status of the law in Australia*

2.1 Section 11 of COGSA 91 provides:

Construction and jurisdiction

(1) All parties to

- (a) a sea carriage document relating to the carriage of goods from any place in Australia to any place outside Australia; or
- (b) a non-negotiable document of a kind mentioned in subparagraph 10(1)(b)(iii), relating to such a carriage of goods;

are taken to have intended to contract according to the laws in force at the place of shipment.

(2) An agreement (whether made in Australia or elsewhere) has no effect so far as it purports to:

- (a) preclude or limit the effect of subsection (1) in respect of a bill of lading or a document mentioned in that subsection; or
- (b) preclude or limit the jurisdiction of a court of the Commonwealth or of a State or Territory in respect of a bill of lading or a document mentioned in subsection (1); or
- (c) preclude or limit the jurisdiction of a court of the Commonwealth or of a State or Territory in respect of:

- (i) a sea carriage document relating to the carriage of goods from any place outside Australia to any place in Australia; or
- (ii) a non-negotiable document of a kind mentioned in subparagraph 10(1)(b)(iii) relating to such a carriage of goods.

(3) An agreement, or a provision of an agreement, that provides for the resolution of a dispute by arbitration is not made ineffective by subsection (2) (despite the fact that it may preclude or limit the jurisdiction of a court) if, under the agreement or provision, the arbitration must be conducted in Australia.



2.2 For present purposes, it is important to understand that “sea carriage document” is defined in Schedule 1A to COGSA 91, the schedule that contains the Amended Hague Rules, to mean:

- (i) a bill of lading; or
- (ii) a negotiable document of title that is similar to a bill of lading and that contains or evidences a contract of carriage of goods by sea; or
- (iii) a bill of lading that, by law, is not negotiable; or
- (iv) a non-negotiable document (including a consignment note and a document of the kind known as a sea waybill or the kind known as a ship’s delivery order) that either contains or evidences a contract of carriage of goods by sea.

2.3 Recent case law that has considered this provision has centred on whether a voyage charter was a ‘sea-carriage document’ to which s11 applied for the purpose of determining whether a foreign arbitration clause offended s 11.

2.4 In *Jebsens International (Australia) Pty Ltd v Interfert Australia Pty Ltd* (2001) 112 SASR 297, the Supreme Court of South Australia determined that a voyage charter did not come within the ambit of s 11 because it was not a ‘sea-carriage document’ as defined in Art 1 of the Amended Hague Rules. It was held that a voyage charter was “a document of a different genus” from a sea carriage document because it did not deal with “the rights of persons holding bills of lading or similar instruments” [7]. It was held further that a charter party was not a sea carriage document simply because it contained a contract for the carriage of goods by sea [8]. Perhaps unsurprisingly, that reasoning has been criticised.

2.5 The same issue was considered by the Full Federal Court of Australia in *Dampskibsselskabet Norden A/S v Beach Building and Civil Group Pty Ltd* (2013) FCR 469 (Norden) where, by majority, the Court affirmed that a voyage charter was not a sea carriage document for the purpose of s 11, overturning the decision of the judge at first instance.

### 3. *An example of the current case law shows Australia’s current position*

3.1 In Norden, the shipowners, DKN, brought arbitration proceedings against the charterers in London pursuant to a clause in the voyage charter. DKN claimed that the charterers were liable for demurrage consequent upon delays in loading a cargo of coal at Dalrymple Bay Coal Terminal in Queensland, Australia and in discharging the coal at its port of destination in China.

3.2 The arbitrator found in favour of DKN, who then sought to enforce the award in Australia. Charterers sought to resist enforcement on the basis that the award had been made pursuant to an arbitration agreement rendered ineffective by s11. At first instance, Foster J held that a voyage charter was a sea carriage document for the purposes of s 11. This decision was consistent with an earlier decision of the Supreme Court of New South Wales, *The*

*Blooming Orchard (No 2)* (1990) 2 NSWLR 273, in which Carruthers J held that a voyage charter was a document relating to the carriage of goods for the purpose of s 9 of the *Sea-Carriage of Goods Act* 1924.

Consequently, the London arbitration clause contained therein was invalid.

3.3 In the Full Federal Court, Rares J, with whom Mansfield J concurred [4], held that, “Ordinarily, a voyage charter, like most charterparties, is a contract for the hire of a ship” where owners agree “to perform one or more designated voyages in return for the payment of freight and, when appropriate, demurrage” [60]. He observed further that charterparties “as an ordinary incident of the shipping industry will contain arbitration clauses that were freely negotiated by sophisticated, professional parties” who “could bargain at arms length for the terms of their charterparties” [66]. Rares J observed that, “the realities of commercial life and the evident purpose of ... s 11 of COGSA, respect the free negotiation of charters by commercial parties in the international shipping trade” [70]. By contrast “the shipper will have no substantive say, and the consignee, or party to whom a bill of lading or negotiable sea-carriage document is transferred no say at all, in the terms or conditions in such a document” [70]. Section 11 purports to protect those parties from “being forced to litigate or arbitrate, away from Australia”. Its purpose, he said, is to:

protect, as part of a regime of marine cargo liability within the object of s 3, the interests of Australian shippers and consignees from being forced contractually to litigate or arbitrate outside Australia. That purpose does not extend to protection of charterers or shipowners from the consequences of enforcement of their freely negotiated charterparties subjecting them to the well-recognised and usual mechanism of international arbitration in their chosen venue [71].

3.4 The decision of the Full Federal Court has been welcomed, primarily on the basis that it is encouraging and supportive of international arbitration in shipping law disputes.

#### 4. *Future direction of the Australian Courts*

4.1 Unless and until there is the opportunity for the High Court to consider the issue that was raised in *Norden*, it is expected that Australian courts, both State and Federal, will follow that decision; an intermediate court of appeal would have to determine that the decision was “plainly wrong” in order to depart from it (*Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89). In any event, with respect, the decision is plainly right and consistent with international jurisprudence: see, for example, the decision of the Federal Court of Appeal of Canada (Gauthier, Pelletier and Mainville JJA) in *Canada Moon Shipping Co Ltd v Companhia Siderurgica Paulista-Cosipa* (2012) 223 ACWS (3d) 12; 2012 FCA 284, cited with approval in *Norden*.

5. *Is there new legislation that will impact on the current position.*

5.1 There is remaining disquiet about the scope and effect of s 11 of COGSA 91. The Australian Maritime and Transport Arbitration Commission (AMTAC) is a Commission of the Australian Centre for International Commercial Arbitration (ACICA) and has as its major objective the promotion of the conduct of maritime arbitration in Australia. It has prepared a submission proposing reform of s 11.

5.2 AMTAC considers that it would be in the national interest for s11 of the *Carriage of Goods by Sea Act 1991* (COGSA) to be amended in order to clarify and provide certainty in relation to the matters described below.

AMTAC considers that:

1. It is desirable that those engaged in the shipping, import and export industry have confidence and certainty as to the scope and application of s11(2) of COGSA. This is especially:

- a) in relation to the types of documents to which this section is to apply beyond those expressly listed or mentioned in the section;
- b) where the effect of the section is to strike down agreements which the parties to those documents have otherwise concluded and were otherwise free to conclude under Australian law (but for that section); and
- c) where the section applies to all shipments in and out of Australia under documents of the type caught by it.

2. In s11 (2)(c) there is no reference to documents relating to the carriage of goods by sea between States or between States and the Northern Territory, thereby allowing for a foreign arbitration clause to be included in those carriage documents. The omission of the application of s11(1) and (2) to contracts for the carriage of goods intra-State can only be due to a drafting oversight. This omission, and the different treatment of intra-State and overseas shipments in this regard, is not supported by any policy considerations. There is no good policy reason why the protection afforded by s11(1) and (2) to Australian importers and exporters should not also be available to those involved in the intra-State carriage of goods by sea. The existing lacuna potentially prejudices Australian shippers and consignees of intra-State carriage, especially where such goods are to be carried on foreign flagged and owned vessels and where the carrier is more likely to insist on terms within its contracts providing for the application of foreign law and for any claims against it to be determined in a foreign jurisdiction.

3. Section 11 (3) allows for arbitration to be conducted in Australia but remains silent as to whether the seat of arbitration is required to be in Australia, noting that in arbitration practice it is possible for the seat of the arbitration to be in a different jurisdiction from that in which the arbitration hearing is being conducted. Further, in providing an exception

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*Jurisdiction and Arbitration Clauses in Bills of Lading*

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to s11(2), s11(3) is able to promote and foster arbitration in Australia as a means of resolving disputes falling within the scope of COGSA. An amendment to s11(3) to clarify the arbitrations to which it applies, in particular by emphasising that it is those where the seat of the arbitration is in Australia, and thereby encouraging arbitrations that have their seat in Australia, is both in the public interest and consistent with the Commonwealth and State legislatures' expressed policies of promoting and favouring arbitration as a means of resolving commercial disputes that would otherwise be compelled to utilise scarce judicial resources.

## THE UNITED STATES POSITION

SUSAN M. DORGAN, ESQ.\*

### 1. *Background And History*

The courts in the United States initially took different paths when addressing jurisdiction and arbitration clauses. It was not until 1995, when the distinction between arbitration and forum selection clauses was more or less eliminated by the United States Supreme Court in *Vimar Segura y Reaseguros v. M/V Sky Reefer*, 115 S. Ct 2322 (1995) (“SKY REEFER”)

#### A. Arbitration Clauses Prior To Sky Reefer

Unlike, jurisdiction clauses, arbitration clauses were given early recognition in the United States. The Federal Arbitration Act (FAA) enacted in 1947 provided:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such a contract or transaction...shall be valid, irrevocable and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. 9 U.S.C. section 2.

The FAA describes “maritime transactions” to include charter parties, bills of lading, wharfage agreements, vessel supply and repair contracts, and “any other matters in foreign commerce...which would be embraced within admiralty jurisdiction.” 9 USC section 1.

The FAA applies to “commerce among the several states or with foreign nations...” 9 USC section 1.

It further provides that if a maritime contract contains an arbitration clause, any suit brought in the United States court is automatically stayed as long as the arbitration decision is pending and the issue is arbitrable pursuant to the contracts terms. 9 USC section 3.

Given the above, it certainly appears that the intent of the drafters were that arbitration clauses were to be honored and upheld. However, issues did arise; such as when another federal statute contained specific provisions as to how contract disputes were to be resolved and it did not call for arbitration. This issue was addressed by the United States Supreme Court in *Wilko v.*

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\* Recovery Lead for Specialty Lines, AIG.

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*Jurisdiction and Arbitration Clauses in Bills of Lading*

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*Swan*, 346 U.S. 427 (1953) wherein the Court held that the parties could not be bound to arbitrate the dispute because the provisions in the Securities Act of 1933 would prevail over the FAA's provisions.

The FAA's arbitration provision was continually tested. See for example, *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985). There, the United States Supreme Court stated that "the preeminent concern of Congress in passing the [Federal Arbitration Act] was to enforce private agreements into which parties had entered, a concern which requires that we rigorously enforce agreements to arbitrate." 346 US at 625-26.

After these rulings, many in the Admiralty field wondered whether courts would hold that the United States Carriage of Goods by Sea Act invalidated arbitration clauses contained in bills of lading. They didn't have to wonder for too long, because the question was definitively answer by the United States Supreme Court in *SKY REEFER*.

In *SKY REEFER*, the plaintiff took the position that the arbitration provision in the FAA conflicted with COGSA's prohibition against the carrier reducing its liability below the floor set in COGSA. It was argued that the existence and enforcement of an arbitration clause in a contract subject to COGSA had the potential to lessen the carrier's liability.

The Court elected not to see a direct conflict because it found that the foreign forum's laws would not necessarily reduce a carrier's liability and therefore the selection of a foreign forum, per se, would not be considered a reduction in liability.

The decision will be discussed more fully below in Section 1. C.

#### B. Jurisdiction Clauses Prior To Sky Reefer

Prior to the *SKY REEFER* decision, forum selection and law clauses were not viewed favorably. In *Knott v. Botany Mills*, 179 U.S. 69 (1900), the Supreme Court resolved a matter involving a bill of lading that stipulated that British law would apply to any dispute arising from the carriage. The carriage involved a cargo of wool aboard a British vessel transiting from Buenos Aires to New York. The Supreme Court held that the Harter Act overrode and nullified the provision. 179 U.S. at 77. As can be seen, this decision was rendered prior to the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, commonly referred to as the "Hague Rules". International Convention For the Unification of Certain Rules of Law Relating to Bills of Lading, Aug. 25, 1924, 51 Stat. 233, 120 L.N.T.S. 155.

In 1936, The Hague Rules were adopted as domestic legislation by the United States with some modifications as the Carriage of Goods by Sea Act (COGSA). 47 U.S.C. §§ 1300-1313. The United States ratified the Hague Rules with the same modifications in 1937.

Neither the Hague Rules nor COGSA addressed choice of forum or choice of law clauses in bills of lading.

Article 3 Section 8 of the Hague Rules was often used to challenge

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*The United States position, by Susan Dorgan*

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arbitration clauses and it was also used to challenge jurisdiction clauses. It provided in relevant part:

Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in this Convention, shall be null and void and of no effect....

It was argued that a bill of lading requiring a matter to be heard in a forum outside the United States and/or requiring the application of a law other than U.S. law, would violate of Article 3 Section 8.

In the United States there were early decisions where the Courts found that COGSA, “contained no express grant of jurisdiction to any particular courts nor any broad provisions of venue” and therefore if the limitations and defenses available to the carrier in the foreign jurisdiction were not substantially different than those available under American law than the clause was enforceable. See for example *Wm. H. Muller & Co. v. Swedish American Line*, 224 F.2d 806 (2nd Cir. 1955), cert denied, 350 U.S. 903 (1955).

A decade or so later, the Second Circuit re-visited the issue in *Indussa Corp. v. S.S. Ranborg*, 377 F.2d 200 (2d Cir. 1967). There, the court held that a clause in the bill of lading declaring the courts of Norway the exclusive forum violated COGSA and was thus invalid. The court relied on Art. 3 Section 8. The court explained that if it upheld the jurisdiction clauses, it would be required to evaluate each individual forum to determine whether those laws would result in the carrier’s liability being lessened below the floor set by COGSA.

Less than a decade later the United States Supreme Court took up the issue in *M/S Bremen v. Zapata Off-Shore Company*, 407 U.S. 1 (1972) (“BREMEN”). At issue was a forum selection clause in a towage contract entered into between a German towage company and an American offshore drilling company for towage of an offshore drilling rig from Louisiana to the Adriatic Sea. The contract contained a clause requiring that “any dispute arising must be treated before the London Court of Justice.” *Id.* at 2. While the rig was being towed in the Gulf of Mexico, it sustained damage and was brought into a port in Florida. The rig owner filed suit in Florida against the German towage company. The German towage company challenged the jurisdiction. The lower court held the forum selection clause unenforceable and the appellate court affirmed.

The matter was appealed to the United States Supreme Court where it reversed the lower courts and held that jurisdiction clauses in maritime contracts should be enforced absent a strong showing of some reason for setting them aside. The Supreme Court offered that a court could set aside jurisdiction clauses if the party challenging the clause could clearly show that

the enforcement of the same would be “unreasonable and unjust” or that the clause would be “invalid for such reasons as fraud or overreaching.” 407 U.S. at 15. Therefore, according to the Supreme Court, only where a jurisdiction clause “would contravene a strong public policy of the forum in which the suit is brought, whether declared by statute or by judicial decision,” would the clause be invalidated. *Id.* at 17.

In addition, The Court also addressed the application of the doctrine of “forum non conveniens” as it applied to jurisdiction clauses. The Court stated that the complaining party bears a heavy burden of proof to invalidate a forum selection clause even if the remoteness of the chosen forum intimates that the clause is part of an adhesion contract. *Id.*

The Court explained the policy behind its decision:

Selection of a London forum was clearly a reasonable effort to bring vital certainty to this international transaction and to provide a neutral forum experienced and capable in the resolution of admiralty litigation. Whatever “inconvenience” Zapata would suffer by being forced to litigate in the contractual forum as it agreed to do was clearly foreseeable at the time of the contracting. *Id.* at 17-18.

Another argument quickly dispensed with was a challenge to the specific language of the forum selection clause being permissive rather than mandatory. The Court found that the clause’s succinct language was clearly mandatory, even with respect to *in rem* actions. *Id.* at 20.

After the BREMEN decision, United States courts also upheld jurisdiction clauses in charter party contracts. See for example, *Sanko Steamship Co. v. Newfoundland Refining Co.*, 1976 AMC 417 (S.D.N.Y. 1976) *aff’d*, Case No. 76-7060 (2d Cir. 1976). There a time charter party required that the contract be governed by English law and that all disputes be litigated or arbitrated in England. *Id.* at 419.

Although many courts after BREMEN began upholding jurisdiction clauses, not all followed suit. For example, the Fifth Circuit held both *Hughes Drilling Fluids v. M/V Lou Fo Shan*, 852 F.2d 840 (5th Cir. 1988) and *Conklin & Garrett v. M/V Finnrose*, 826 F.2d 1441 (5th Cir. 1987) that requiring the shipper to bring an action in a foreign forum would of necessity “lessen the liability of the carrier,” which is prohibited under COGSA.

#### C. The *Vimar Seguros Yy Reasegueros v. M/V Sky Reefer* Decision

*Vimar Seguros y Reasegueros v. M/V Sky Reefer*, 115 S. Ct. 2322 (1995) involved the carriage of a cargo of oranges from Morocco to the United States. The shipper was a New York fruit distributor that purchased the fruit from a Moroccan grower and chartered a vessel to transport it to the United States. The vessel, owned by a Panamanian company, was time chartered to a Japanese carrier. Once the carrier received the cargo in Morocco, it issued to the Moroccan supplier a form bill of lading containing the contract terms on the back of the bill. A clause specified that the contract of carriage would be



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*The United States position, by Susan Dorgan*

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governed by Japanese law and any dispute would be referred to the Tokyo Maritime Arbitration Commission for arbitration in Tokyo, Japan. Id at 2325. During transit, the vessel encountered heavy weather and much of the cargo was damaged or destroyed. The American fruit distributor and its insurer brought an action against the vessel and its owner in a federal district court in the State of Massachusetts. The vessel and its owner moved to stay the action and to compel arbitration in Tokyo pursuant to the terms in the bill of lading and the provisions of the FAA. Id at 2330.

The carrier's motion to stay the action and compel arbitration was granted by the district court. It also certified for interlocutory appeal the question of whether the provisions of Section 3, Clause 8 of COGSA would nullify a forum clause contained in a bill of lading.

The First Circuit Court of Appeals affirmed the district court decision staying the action and compelling arbitration, but held that the arbitration clause in the bill of lading would normally be invalid under COGSA. The court found however, that because the Federal Arbitration Act applied, that the conflict between the mandate of the FAA would trump the prohibition of COGSA. Id. at 731-32. The United States Supreme Court agreed to hear the matter and affirmed.

The shipper raised two issues against the enforcement of the arbitration clause. First, it claimed that the forum clause was unenforceable because it was part of an adhesion contract. Id. at 2325. Second, it claimed that the forum clause violated COGSA Article 3, Section 8 which prohibits any language in a bill of lading that would "lessen the liability" of a carrier. The shipper argued that since the clause provided for arbitration in Tokyo and application of Japanese law, the cost of proceeding in that distant forum was not only prohibitive but would also effectively lessen or eliminate the liability of the carrier. Id at 2326. The shipper's argument implied that such forum selection clauses could potentially limit liability because there was no guarantee that a foreign forum would apply COGSA or its equivalent. Id at 2329.

The Supreme Court dismissed the adhesion argument by affirming the lower court's determination that bills of lading were not adhesion contracts per se because the Federal Arbitration Act specifically includes bills of lading in its definition of enforceable arbitration agreements.

With respect to the purported COGSA prohibition on forum selection clauses, the Supreme Court invalidated the rule set forth in *Indussa Corp. v. S.S. Ranborg*, 377 F.2d 200 (2d Cir. 1967) (en banc). The Court explained that Section 3, Clause 8 of COGSA was designed to prevent clauses in bills of lading that would lessen the specific duties and liabilities COGSA placed on a carrier. Id at 2327. The Court found that forum selection clauses in bills of lading would not reduce these liabilities per se.

As to the question of whether the foreign forum will apply a law equivalent to COGSA, the court held that a forum selection clause would not

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*Jurisdiction and Arbitration Clauses in Bills of Lading*

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be invalidated unless it was determined that an “inferior law” was applied and actually reduced the carrier’s liability. *Id.* at 2330. The Court did state that it would find the imposition of an inferior law “repugnant to the public policy of the United States” and would decline enforcement on that ground. *Id.*

The Court explained that it was required to recognize “contemporary principles of comity and commercial practice” and that “the historical judicial resistance to foreign forum selection clauses ‘has little place in an era when....businesses once essentially local now operate in world markets.’” *Id.* at 2328.

The Court concluded by stating:

If the United States is to be able to gain the benefits of international accords and have a role as a trusted partner in multilateral endeavors, its courts should be most cautious before interpreting its domestic legislation in such manner as to violate international agreements. That concern counsels against construing COGSA to nullify foreign arbitration clauses because of inconvenience to the plaintiff or insular distrust of the ability of foreign arbitrators to apply the law. *Id.* at 2329.

## 2. *Arbitration Clauses and Jurisdiction Clauses After Sky Reefer*

### A. *Southern Coal Corporation V. Ieg Pty Ltd and Ms “Anita” Kai Freese GmbH & Co. Kg*, (E.D. Va, February 26, 2016)

The above case addressed two issues, one the proper procedure to be used to compel arbitration and secondly, how a court should handle a matter where some of the parties have the right to arbitrate their claim and other defendants do not.

The case involved a shipment of shovels from Newcastle, Australia that were to be delivered in Norfolk, Virginia. Southern Coal Corporation’s (“Southern Coal”) agent, AAMAC contracted with IEG Pty Ltd (“IEG”) to arrange the transportation. IEG advised that it had chartered space on board the vessel BBC RIO GRANDE, owned and operated by MS “Anita” Kai Freese (“Freese”). The shovels were loaded onboard; however, rather than proceeding to Norfolk, the vessel was diverted to Masan, South Korea where the shovels were removed from the vessel. Eventually, the shovels were loaded on board the MV CLIPPER NEW HAVEN which was operated by BBC Chartering & Logistic GmbH & Co. KG (“BBC”). A second booking note and bill of lading was issued.. Not surprisingly, the shovels arrived in a damaged state.

Southern Coal filed suit in the Western District of Virginia against IEG, and other parties. After the complaint was amended the remaining defendants were IEG and Freese.

Freese brought a Motion to dismiss for improper venue under Rule 12(b)(3) pursuant to the old Fourth Circuit precedent established in *Sucampo Pharm., Inc. v. Astellas Pharma, Inc.*, 471 F.3d 544, 550 (4th Cir. 2006). The

court however explained that Sucampo was no longer good law in light of the United State Supreme Court decision in *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S.Ct. 568 (2013).

The court explained that:

In *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, the Supreme Court held that Rule 12(b)(3), “authorize[s] dismissal only when venue is ‘wrong’ or ‘improper’ in the forum in which it was brought.” *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S. Ct. 568, 577 (2013). Whether venue is wrong or improper is governed by the provisions of 28 U.S.C.A. § 1391. Under 28 U.S.C.A. § 1391(b), a civil action may be brought in: “(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.”

According to the Supreme Court, the proper analysis when venue is challenged for dismissal is to look only to whether the case falls within one of the categories of § 1391(b) only.

*Atl. Marine*, 134 S. Ct. 577. If venue does fall within one of these categories, venue is proper; if not, venue is improper. *Id.* If venue is found to be improper the case must be dismissed or transferred under 28 U.S.C. § 1406(a), *Id.* However, in contrast to the previously existing precedent in this Circuit, “Whether the parties entered into a contract containing a forum-selection clause has no bearing on whether a case falls into one of the categories of cases listed in § 1391(b). As a result, a case filed in a district that falls within § 1391 may not be dismissed under § 1406(a) or Rule 12(b)(3).” *Atl. Marine*, 134 S. Ct. at 577. Where—as is here—the venue is proper,<sup>1</sup> the party must enforce the forum selection clause by another means other than Rule 12(b)(3).

The court thereafter decided to construe the motion as one to compel arbitration.

The court had to address the fact that multiple bills of lading and booking notes existed for the transportation of the shovels that should have been delivered under one bill of lading and one booking note. However, once the shovels were abandoned in Masan, a second booking note and bill of lading was issued for the transportation of the shovels from Masan to Virginia. The second booking note contained a Jurisdiction and Arbitration Clause providing for arbitration in London in accordance with the London Maritime Arbitrators Association terms.

Southern Coal’s argument was that they should not have to arbitrate in

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*Jurisdiction and Arbitration Clauses in Bills of Lading*

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London, because it was only through the breach of the original contract that the second booking note and bill of lading came into existence. Southern Coal's position was that they were being penalized because what should have been one carriage under one bill of lading was now two separate agreements making it impossible for Southern to sue the "carrier" in a single action and single forum and that was not what Southern Coal bargained for when it first entered into the original Booking Note and the First Bill of Lading.

The court held that they would not invalidate the arbitration clause because the party seeking arbitration may have breached the agreement because that would violate the strong federal policy in favor of arbitration.

The court explained that:

The fact that the arbitration clause places arbitration in a foreign forum does not reduce its enforceability. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 636-37, 105 S. Ct. 3346, 3359, 87 L. Ed. 2d 444 (1985) ("There is no reason to assume at the outset of the dispute that international arbitration will not provide an adequate mechanism. To be sure, the international arbitral tribunal owes no prior allegiance to the legal norms of particular states; hence, it has no direct obligation to vindicate their statutory dictates. The tribunal, however, is bound to effectuate the intentions of the parties."). Specifically in the context of the Carriage of Goods by Sea Act ("COGSA"), the Supreme Court has found that the wide sweeping provisions of COGSA did not invalidate foreign arbitration and that concerns that the parties would be unable to enforce their legal protections. *Vimar seguros y Reaseguros, S.A. v. Sky Reefer* 515 U.S. 528, 541 (1995) (hereinafter "Sky Reefer").

Based upon the above, the court found that it must uphold the arbitration clause with respect to the claims between Southern and Freese.

However, the court was not going to dismiss the action, because

"Were there no subsequent opportunity for review and were we persuaded that 'the choice-of-forum and choice-of-law clauses operated in tandem as a prospective waiver of a party's right to pursue statutory remedies..., we would have little hesitation in condemning the agreement as against public policy.'" *Sky Reefer*, 515 U.S. at 540 (quoting *Mitsubishi*, 473 U.S. at 638).... Accordingly, this Court finds that in compelling arbitration of the claims between Southern and Freese, it must stay the suit between the parties and retain jurisdiction during the pendency of the foreign arbitration.

Compelled arbitration of the claims against Freese does temporarily bifurcate the present suit. While the separation of the defendants is not ideal, the Supreme Court has explicitly discussed that where there exist both arbitrable and non-arbitratable claims, the arbitrable claims must be submitted to arbitration pursuant to the Federal Arbitration Act and the strong public policy of enforcing arbitration clauses. *KPMG LLP v. Cocchi*, 132 S. Ct. 23,

24 (2011). Specifically, the Court considered the even where the submission of arbitrable would separate the dispute into multiple forums:

The Act has been interpreted to require that if a dispute presents multiple claims, some arbitrable and some not, the former must be sent to arbitration even if this will lead to piecemeal litigation. From this it follows that state and federal courts must examine with care the complaints seeking to invoke their jurisdiction in order to separate arbitrable from nonarbitrable claims. A court may not issue a blanket refusal to compel arbitration merely on the grounds that some of the claims could be resolved by the court without arbitration.

The Court stayed the action for the shorter of 6 months or the completion of the arbitration.

B. *Idaho Pacific Corporation v. Binex Line Corporation*, Case No. 4:15-cv-00510-CWD, (D. Idaho March 1, 2016)

In this case, the plaintiff, Idaho Pacific Corporation (“Idaho Pacific”) alleged that it did not receive a copy of the original bill of lading for the initial shipment or for the return shipment of potato flour that was returned because it failed to meet the standards required by the receiver. Idaho Pacific brought an action against Binex Line Corporation (“Binex”) the carrier arising out storage costs incurred when the product was returned.

When the return shipment arrived in Oakland, California the potato flour had to be sampled by the Food and Drug Administration. The potato flour was moved to a storage facility and sampled. Approximately one month later it was released from storage after the test results came back.

Idaho Pacific and Binex disagreed as to whether the potato flour had to remain in storage while awaiting the FDA test results. Binex claimed that the cargo could not be moved from the storage facility until after the results were obtained.

Binex shipped the potato flour from Oakland by rail destined for Ririe, Idaho. While in transit it insisted that Idaho Pacific pay for its freight charges. Idaho Pacific refused to pay all of the charges. Binex refused to deliver the potato flour.

Idaho Pacific filed suit in the Idaho state court seeking the return of the potato flour. The next day, Binex Line, filed a motion to transfer or dismiss with the federal district in Idaho.

The court explained that to decide the motion to transfer or dismiss the court needed to determine the proper forum in which to adjudicate the complaint. The Court explained that if the forum selection clause were binding and no exceptional circumstances were present, then Idaho Pacific would be contractually obligated to pursue its claims in the U.S. District Court for the Central District of California. If the forum selection clause were inoperable or exceptional circumstances weigh in favor of non-enforcement, the case would remain in the District of Idaho.

The bill of lading contained a forum selection clause that required any claims relating to the shipment be resolved in the U.S. District Court for the Central District of California.

The court determined that in order to resolve whether the forum selection clause was enforceable, it had to determine whether COGSA or the Carmack Amendment applied.

To reach its determination the court referred to the U.S. Supreme Court decision in *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 561 U.S. 89, 96 (2010) (“Regal Beloit”) wherein the court explained that “[a]lthough COGSA imposes some limitations on the parties’ authority to adjust liability, it does not limit the parties ability to adopt forum-selection clauses (citing to *Vimar Sky Reefer*).

The court found that COGSA and not the Carmack Amendment applied. It next had to determine if there were any exceptional circumstances as to why the forum selection clause should not be enforced.

The court noted that:

“[a] forum selection clause must be given controlling weight in all but the most exceptional circumstances.” Citing to *Atlantic Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S. Ct. 568, 579 (2013).

The Supreme Court in *Atlantic Marine* explained that “only under extraordinary circumstances unrelated to the convenience of the parties should a [Section] 1404(a) motion be denied. *Id.* at 581.

The court referred to the United States Supreme Court’s analysis in *Atlantic Marine* which set explained how a forum selection clause alters the Section 1404(a) analysis:

“First, the plaintiff’s choice of forum merits no weight.” *Atlantic Marine*, 134 S.Ct. at 582. “Rather, as the party defying the forum-selection clause, the plaintiff bears the burden of establishing that transfer to the forum for which the parties bargained is unwarranted” *Id.*

“Second, a court evaluating a defendant’s [Section] 1404(a) motion to transfer based on a forum-selection clause should not consider arguments about the parties’ private interests,” such as convenience. *Id.* “When parties agree to a forum-selection clause, they waive the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the litigation.” *Id.* “A court accordingly must deem the private-interest factors to weigh entirely in favor of the preselected forum.” *Id.* And, “[a]s a consequence, a district court may consider arguments about public interest factors only.” *Id.*

Third and finally, “when a party bound by a forum-selection clause flouts its contractual obligation and files suit in a different forum, a [Section] 1404(a) transfer of venue will not carry with it the original venue’s choice-of-law rules—a factor that in some circumstances may affect public-interest considerations.” *Id.*

Idaho Pacific argued that Idaho's public policy against forum selection clause should render the current forum selection clause void. Idaho Code Section 29-110 provides in relevant part:

(1) Every stipulation or condition in a contract, by which any party thereto is restricted from enforcing his rights under the contract in Idaho tribunals, or which limits the time within which he may thus enforce his rights, is void as it is against the public policy of Idaho. Nothing in this section shall affect contract provisions relating to arbitration so long as the contract does not require arbitration to be conducted outside the state of Idaho.

The Idaho District Court rejected the argument:

"because "[i]f Idaho Code § 29-110(1) was determinative, striking down the forum selection clause would be routine rather than extraordinary, standing Atlantic Marine on its head." (emphasis in original). Accordingly, the Court rejects Idaho Pacific's argument that Idaho's public policy against forum selection clauses, without more, is sufficient to invalidate the clause at issue here.

However, the Court did not transfer the case to the California District Court.

Binx argued that Idaho Pacific was listed on the bill as the consignee. Alternatively, they argued that Idaho Pacific accepted the bill of lading and should be bound by it. The Court found however that Idaho Pacific never referenced the bill of lading or its terms in its complaint and it specifically alleged that it neither negotiated nor received the bill of lading for the return shipment until after it filed suit.

The Court noted that upholding forum selection clauses is favored; however, they explained that the majority of the cases stressed that the clause was bargained for by the parties, citing as authority for its position:

*Atlantic Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S. Ct. 568, 579 (2013) ("‘interest of justice’ is served by holding parties to their bargain."); *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972) ("There are compelling reasons why a freely negotiated private international agreement, unaffected by fraud, undue influence, or overweening bargaining power, [ ], should be given full effect."); *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) ("the District Court will be called on to address such issues as the convenience of a Manhattan forum given the parties' expressed preference for that venue, and the fairness of transfer in light of the forum-selection clause and the parties' relative bargaining power."); and *Wada Farms, Inc. v. Jules & Associates, Inc.*, 2015 WL 128100, at \*2 (D. Idaho Jan. 7, 2015) ("A valid forum selection clause bargained for by the parties, protects their legitimate interests and further vital interests of the justice system.").

The Court concluded that there was no evidence that any bargaining

occurred in the present case between Binex Line and Idaho Pacific for the forum selection clause or any of the other terms contained in the bill of lading. Based upon their finding that Idaho Pacific's lack of bargaining power qualifies as an exceptional circumstance the court would not enforce the forum selection clause contained in the bill of lading and denied the defendant's motion to transfer.

C. *Amazon Produce Network, LLC v. NYK Line*, ( E.D. Pa September 21, 2015).

In this case the NYK Line sought to have the action transferred to the Tokyo District Court pursuant to the terms of the applicable bill of lading. Amazon Produce Network ("Amazon Produce") sought to avoid the transfer and argued that the Japanese Court would apply the Hague-Visby rules to the exclusion of COGSA and in doing so would reduce the carrier's liability.

(Obviously to most of us this would cause some head scratching because the Hague-Visby Rules provide for 666.67 SDRs per package and COGSA provides for USD \$500.00.)

Amazon Produce retained a Japanese attorney as an expert, but it appears that their expert miscalculated. They reversed the conversion, so that 1 SDR equaled US \$.724763 resulting in a package limitation value of \$483.18 which is lower than the USD \$500.00. The correct calculation would result in a package limitation value exceeding COGSA's package limitation.

NYK Line pointed out the error and the Court granted NYK's motion.

3. *Current Position*

Although one can never rule out what a court may do in a common law system, it would seem safe to say that arbitration clauses and jurisdiction clauses are accepted in the United States. However, that does mean that the parties will not stop trying to find ways to avoid them.

4. *The united states will likely opt-in to chapter 14*

It may be remembered that the United States was a leading advocate of the compromise approach during the UNCITRAL negotiations over the inclusion of a provision on jurisdiction. See, Michael Sturley Report Proposal by the United States of America, U.N. doc. no. A/CN.9/WG.III/WP.34¶¶30-35 (2003).

5. *Is there New Legislation That Will Affect The Current Position?*

The Arbitration Fairness Act of 2015 is a bill to amend Title 9 of the United States Code. If enacted, it could potentially impact on claims arising under Passenger Tickets. As it presently stands many Cruise Lines require that all disputes, other than for emotional or bodily injury, illness to or death, are to be subject to binding arbitration. If the Arbitration Fairness Act of 2015 becomes law, such would be rendered unenforceable.



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*The United States position, by Susan Dorgan*

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Below is a copy of the proposed bill.

Congress assembled,

Section 1. Short title.

This Act may be cited as the “Arbitration Fairness Act of 2015”.

Sec. 2. Findings.

The Congress finds the following:

- (1) The Federal Arbitration Act (now enacted as chapter 1 of title 9 of the United States Code) was intended to apply to disputes between commercial entities of generally similar sophistication and bargaining power.
- (2) A series of decisions by the Supreme Court of the United States have interpreted the Act so that it now extends to consumer disputes and employment disputes, contrary to the intent of Congress.
- (3) Most consumers and employees have little or no meaningful choice whether to submit their claims to arbitration. Often, consumers and employees are not even aware that they have given up their rights.
- (4) Mandatory arbitration undermines the development of public law because there is inadequate transparency and inadequate judicial review of arbitrators’ decisions.
- (5) Arbitration can be an acceptable alternative when consent to the arbitration is truly voluntary, and occurs after the dispute arises.

Sec. 3. Arbitration of employment, consumer, antitrust, and civil rights disputes.

- (a) In general. - Title 9 of the United States Code is amended by adding at the end the following:

“Chapter 4 - Arbitration of employment, consumer, antitrust, and civil rights disputes

“Sec.

“401. Definitions.

“402. Validity and enforceability.

“§ 401. Definitions

“In this chapter –

“(1) the term ‘antitrust dispute’ means a dispute –

“(A) involving a claim for damages allegedly caused by a violation of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12)) or State antitrust laws; and

“(B) in which the plaintiffs seek certification as a class under rule 23 of the Federal Rules of Civil Procedure or a comparable rule or provision of State law;

“(2) the term ‘civil rights dispute’ means a dispute –

“(A) arising under –

“(i) the Constitution of the United States or the constitution of a State; or

“(ii) a Federal or State statute that prohibits discrimination on the basis of

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*Jurisdiction and Arbitration Clauses in Bills of Lading*

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race, sex, disability, religion, national origin, or any invidious basis in education, employment, credit, housing, public accommodations and facilities, voting, or program funded or conducted by the Federal Government or State government, including any statute enforced by the Civil Rights Division of the Department of Justice and any statute enumerated in section 62(e) of the Internal Revenue Code of 1986 (relating to unlawful discrimination); and

“(B) in which at least 1 party alleging a violation of the Constitution of the United States, a State constitution, or a statute prohibiting discrimination is an individual;

“(3) the term ‘consumer dispute’ means a dispute between an individual who seeks or acquires real or personal property, services, securities or other investments, money, or credit for personal, family, or household purposes and the seller or provider of such property, services, securities or other investments, money, or credit;

“(4) the term ‘employment dispute’ means a dispute between an employer and employee arising out of the relationship of employer and employee as defined in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203); and

“(5) the term ‘predispute arbitration agreement’ means any agreement to arbitrate a dispute that had not yet arisen at the time of the making of the agreement.

“§ 402. Validity and enforceability

“(a) IN GENERAL. –Notwithstanding any other provision of this title, no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of an employment dispute, consumer dispute, antitrust dispute, or civil rights dispute.

“(b) APPLICABILITY. –

“(1) IN GENERAL. –An issue as to whether this chapter applies to an arbitration agreement shall be determined under Federal law. The applicability of this chapter to an agreement to arbitrate and the validity and enforceability of an agreement to which this chapter applies shall be determined by a court, rather than an arbitrator, irrespective of whether the party resisting arbitration challenges the arbitration agreement specifically or in conjunction with other terms of the contract containing such agreement.

“(2) COLLECTIVE BARGAINING AGREEMENTS. –Nothing in this chapter shall apply to any arbitration provision in a contract between an employer and a labor organization or between labor organizations, except that no such arbitration provision shall have the effect of waiving the right of an employee to seek judicial enforcement of a right arising under a provision of the Constitution of the United States, a State constitution, or a Federal or State statute, or public policy arising therefrom.”.

*The United States position, by Susan Dorgan*

- (b) TECHNICAL AND CONFORMING AMENDMENTS. –
- (1) IN GENERAL. –Title 9 of the United States Code is amended –
- (A) in section 1, by striking “of seamen,” and all that follows through “interstate commerce”;
- “4. Arbitration of employment, consumer, antitrust, and civil rights disputes 401”.
- (B) in section 2, by inserting “or as otherwise provided in chapter 4” before the period at the end;
- (C) in section 208 –
- (i) in the section heading, by striking “Chapter 1; residual application” and inserting “Application”; and
- (ii) by adding at the end the following: “This chapter applies to the extent that this chapter is not in conflict with chapter 4.”; and
- (D) in section 307 –
- (i) in the section heading, by striking “Chapter 1; residual application” and inserting “Application”; and
- (ii) by adding at the end the following: “This chapter applies to the extent that this chapter is not in conflict with chapter 4.”
- (2) TABLE OF SECTIONS. –
- (A) CHAPTER 2. –The table of sections for chapter 2 of title 9, United States Code, is amended by striking the item relating to section 208 and inserting the following:
- “208. Application.”.
- (B) CHAPTER 3. –The table of sections for chapter 3 of title 9, United States Code, is amended by striking the item relating to section 307 and inserting the following:
- “307. Application.”.
- (3) TABLE OF CHAPTERS. –The table of chapters for title 9, United States Code,
- is amended by adding at the end the following:
- SEC. 4. EFFECTIVE DATE.
- This Act, and the amendments made by this Act, shall take effect on the date of enactment of this Act and shall apply with respect to any dispute or claim that arises on or after such date.



## SHIP FINANCING SECURITY PRACTICES

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## **AN INTRODUCTION TO THE CMI IWG ON SHIP FINANCE SECURITY PRACTICES**

*Session 6 Joint session between the CMI IWG on Ship Finance Security  
Practices and The USMLA Marine Finance Committee*

**ANN FENECH\***

### *Introduction*

As some of you may or may not know, when the first draft of the Cape Town Convention, or as formally known the Convention on International Interests in Mobile Equipment was first drafted its application to ships was provisional, and this was indicated by the use of square brackets every time there was a reference to ships.

The inclusion in the Convention of ships was very vigorously questioned at the time by the International Maritime Organisation (IMO) as well as the United Nations Conference on Trade and Development (UNCTAD). The main reasons against the inclusion of a shipping protocol was the fact that international maritime law is a distinctive corpus juris which had long been established, furthermore the International Convention on Maritime Liens had just been adopted, and that furthermore any international development related to shipping had to include the industry and recognised bodies which had long been an intrinsic part of the development of International law related to and effecting shipping.

As a result, references in the Cape Town Convention to shipping were effectively dropped and the Cape Town Convention was adopted in 2001. Today we have 3 protocols dealing with aircraft, rolling stock and space equipment.

### *Further developments*

It was not until 2013 that the Governing Council of Unidroit in its 92nd Session in May of 2013, that the preparation of other protocols to the Cape Town Convention was put on the Agenda as part of the Triennial Work Programme for 2014 – 2016. A protocol on Ships and maritime transport Equipment was one of them. Quite an extensive report has been prepared by

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\* Chair, Managing Partner of Fenech and Fenech Advocates Malta.

the Secretariat with a recommendation that a “*Further feasibility study on the preparation of a new Protocol to the Cape Town Convention covering ships and maritime equipment*” be conducted”

This recommendation came to the attention of Mr. Stuart Hetherington President of CMI who wrote to the President of Unidroit asking for further information. The Secretary General of Unidroit replied saying that the Governing Council had taken note of the report and had asked the Secretariat to examine the feasibility of such work with a medium level of priority adding that Unidroit would not fail to seek the advice of CMI as and when their consideration of the matter advances.

In February 2014 our President again wrote to the Secretary General of Unidroit asking to be brought up to date with the deliberations within UNIDROIT on the topic. The Secretary of UNIDROIT replied stating that given the fact that a higher priority status had been given to other projects, for the time being the Secretariat was gathering information on the actual financing practices of the maritime industry and on whether the extension of the Cape Town Convention system to ships could be a suitable response to the legal challenges in this respect. He concluded by stating that he would welcome any information that the CMI were in a position to share concerning actual financing practices in the maritime industry sector.

In August 2014, the Secretary General of Unidroit again confirmed that there were other projects that were enjoying higher levels of priority reiterating that there was an ongoing effort at collecting as much information on ship finance practices as possible.

### *Creation of IWG*

The above is the background behind the creation of the CMI International Working Group on Ship Finance Security Practices. In August of that year Stuart Hetherington called me and asked me whether I would like to chair such an IWG aimed at assessing what were the ship finance security practices in the various countries represented at CMI. At that early stage we called it the Cape Town Convention IWG. We set about choosing a team of people and I am very happy to say that all the ones invited agreed to be part of the group. The members of the group are:

Mr. David Osborne – Partner at Watson Farley and Williams whose practice focuses on asset and project finance with a particular emphasis on the shipping and offshore industries.

Mr. Andrew Tetley – Partner at Reed Smith in Paris who is both an aviation lawyer and a shipping lawyer and who has written extensively about the subject.

Mr. Armstrong Chen – a Partner at King and Wood Mallesons in Beijing and an experienced arbitrator in commercial contract, ship finance and international trade;

Prof. Souchirou Kozuka – Professor at Gakushuin University in Tokyo who was involved in the drafting of the Space Protocol of the Cape Town Convention and participated in the discussion at UNIDROIT as the Japanese delegate.

Camilla Mendes Vianna Cardoso – a marine litigation lawyer from Brazil with experience in a cross section of shipping disputes including assisting banks and owners and ship yards;

Allen Black – Partner of Winston and Strawn in the United States – an experienced marine litigation lawyer who has an impressive portfolio in representing financiers of vessels belonging to defaulting owners;

Stefan Rindfleisch – a Partner at Ehlerman Rindfleisch and Gadow in Hamburg who specializes in the field of structured maritime financing.

Andrea Berlingieri – from Studio Legali Berlingieri who has developed a particular practice in assisting ship owners in the structuring of their financing.

And myself. I have been a marine litigation lawyer for the past 30 years and have been heavily involved over the years with assisting financiers enforce their mortgages and securities over Maltese registered vessels and non Maltese registered vessels.

The International Working Group was formally set up during the Executive Council Meeting in Istanbul last year. David Osborne was appointed as the Rapporteur of the Group. At the same meeting last year it was decided that a change in the name was called for because its existing name might be misleading. The IWG was therefore rechristened *Ship Finance Security Practices*. Following Istanbul last year we were determined to finalise a questionnaire to be sent out to all the National Maritime Law Associations. The major challenge was producing a questionnaire which would not be interminable and yet which would produce enough information for us to make an intelligent assessment of the situation at the end. This was very difficult and as a result we have ended up with a questionnaire which is much longer than most of us would wish for but which I am afraid cannot be helped.

If you were to glance at the questionnaire, one would notice that it covers all the things which really need to be explored including which conventions have the various countries signed up to, the nature of the ship's register, formalities associated with the registration of mortgages, information relating to security interests in ships, enforcement issues etc. The list is endless.

At this point I must thank David Osborne who came up with a number of drafts and patiently put together all the suggestions and amendments provided by the various members in the group.

In March of this year we finalised the questionnaire and it was sent out to the National Maritime Law Associations in April.



*Way forward*

The questionnaire has already raised substantial interest in a number of Maritime Law Associations. Croatia and Argentina have already sent their replies and I know other National Maritime Law Associations have set up sub-committees to deal with the subject matter as is the case in Germany and Italy.

Once the replies are received we will then start to put them into some sort of order so that we would be in a position to compile a comprehensive report on what are the finance security practices in a great number of jurisdictions which may enable us to draw some conclusions to be presented to the executive council of CMI.

## **HYPOTHEQUES/MORTGAGES, MARITIME LIENS AND ENFORCED SALE: ATTEMPTS AT UNIFICATION**

**GIORGIO BERLINGIERI**

There are two International Instruments in force<sup>1</sup>, relating to maritime liens and mortgages/hypothèques.

A review of their provisions may be made for the purpose of considering how lien holders and mortgagees/holders of hypothèques<sup>2</sup> are offered protection in relation to their claims.

To begin with it must be acknowledged that the two Conventions do not have a significant acceptance.

As to the 1926 Convention, although there are 28 States parties to it<sup>3</sup>, no common law country is amongst them.

With regard to the 1993 Convention, out of the 18 States parties<sup>4</sup>, only a few are traditional maritime countries or have a relevant ship's tonnage.

The CMI started considering the adoption of a uniform law on maritime liens and mortgages/hypothèques at the Amsterdam Conference in 1904 and the basic issue was to restrict as much as possible the number of maritime liens having priority over mortgages/hypothèques. There appeared to be a significant difference in the national laws, for in common law countries, except the United States, the maritime liens were very few, whilst in civil law countries they were numerous and all with priority over hypothèques.

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<sup>1</sup> The 1926 Brussels Convention, entered into force the 2nd June 1931 and the 1993 Geneva Convention, entered into force the 5th September 2004.

<sup>2</sup> The two terms are used as historically the hypothèque is a security very different from the mortgage. The mortgage has now come close to the hypothèque, the more significant difference being that of the power of sale and the power to take possession of the mortgaged property, which does not exist for the hypothèque. For a review: G. Berlingieri, *Understanding ship mortgage law*, *Maritime Advocate* 36 (2004).

<sup>3</sup> Algeria, Argentina, Belgium, Brazil, Cuba, Denmark, Estonia, Finland, France, Haiti, Hungary, Iran, Italy, Lebanon, Luxembourg, Madagascar, Monaco, Norway, Poland, Portugal, Romania, Spain, Switzerland, Sweden, Syrian Arab Republic, Turkey, Uruguay, Zaire.

<sup>4</sup> Albania, Benin, Congo, Ecuador, Estonia, Lithuania, Monaco, Nigeria, Peru, Russian Federation, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Serbia, Spain, Syrian Arab Republic, Tunisia, Ukraine, Vanuatu.

Although there was awareness that the number of maritime liens with priority over the hypothèque was to be reduced to render this type of security more attractive, the civil law countries were in favour of preserving as many maritime liens as possible<sup>5</sup>.

The policy adopted by the CMI was to ensure the protection of lenders granting long terms ship financing against security on the ship.

To provide such protection the number of maritime liens in the 1926 Convention was restricted. However the validity of the mortgages and hypothèques was made conditional (art. 1) on their endorsement in the ship register.

The Convention then lists the individual maritime liens in art. 2, and in art. 3 states that mortgages and hypothèques rank after the maritime liens listed in the previous article. However the Convention allows State parties to grant maritime liens in respect of other claims, provided they rank after the registered mortgages and hypothèques.

A short time is fixed in art. 9 (one year, except for necessities supplied to the ship, which are barred after six months) for the extinction of maritime liens.

The 1993 Convention is an attempt to face the dissatisfaction of the common law countries towards the 1926 Convention by reducing the number of maritime liens with priority over hypothèques.

Aiming at proposing a balanced instrument, the claims for necessities were deleted, as well as the claims for general average and for loss of, or damage to, cargo and passengers' effects.

Whilst a lien for crew's repatriation costs and social insurance contribution payable on their behalf was added, the salvage special compensation under the 1989 Convention is not secured by maritime lien.

Although a right of retention to protect shipbuilders and ship repairers is introduced in art. 7, pursuant to art. 12.4 a mortgagee or a holder of an hypothèque will be in a position to obtain surrender of a retention of the ship by negotiating the payment of his claim out of the proceeds of sale after satisfaction of the maritime liens.

Conclusively, the holders of mortgages and hypothèques seem to have been offered increased attention. However the 1993 Convention acknowledges that the safeguarding of the general interest of shipping requires the protection of certain claims, whether in contract or in tort, relating to providing services to the ship and ensuring safety on board. Therefore such claims are continued to be given priority over claims arising out of financing through a contractual charge.

Very sensibly the 1993 Convention includes provisions also on forced sale of ships. Its unexpected failure therefore made lack of uniformity to

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<sup>5</sup> For more information on maritime liens and the ship's hypothèque and a review of the unification process see F. BERLINGIERI, *Lien holders and mortgagees: who should prevail?*, *Lloyd's Maritime and Commercial Law Quarterly*, 1988, 157.

continue not only in respect of the recorded and not recorded charges on the ship but also in respect of forced sale.

The CMI therefore started to work on an ad hoc instrument on forced sale. An IWG was constituted, which made available a complete set of rules not in conflict with the provisions on forced sale in the 1993 Convention<sup>6</sup>. As per Resolution adopted at the CMI Assembly on 17 June 2014 in Hamburg, the Draft International Convention on Foreign Judicial Sales of Ships and their Recognition containing such rules was approved.

Provisions on forced sale were already contained in articles 10 and 11 of the 1967 MLM Convention, which is ratified by Norway, Sweden and Denmark.

There has been accession by three other States: Morocco, Syrian Arab Republic and Vanuatu but, contrary to many other Conventions<sup>7</sup>, the entry into force of the 1967 Convention is made subject only to ratification, with accession not being taken into account.

Instruments of ratification may be deposited (art. 19) exclusively by the signatory States which were represented at the Diplomatic Conference<sup>8</sup>. Accession by other States becomes relevant, and increases the number of States Parties, only after the Convention has come into force with the deposit of five ratifications.

Arts. 11 and 12 of the 1993 Convention substantially reflect what already stated in arts. 10 and 11 of the 1967 Convention: the structure of the provisions relating to forced sale is not changed and only a few additions or amendments are made.

The object and the purpose of the provisions thus remain the same, namely that of ensuring protection of claims secured both by registered charges, such as hypothèques and mortgages, as well as those secured by maritime liens and rights of retention.

In fact both in the 1967 and in the 1993 Convention there are clear provisions about the transfer of title and its deletion, and certainty is made regarding new registration after the enforced sale.

Conclusively, if the shipping community is cool regarding unification of maritime law on hypothèques/mortgages and maritime liens, at least it should look with favour to the Draft International Convention on Judicial Sales prepared by the CMI.

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<sup>6</sup> G. BERLINGIERI, *An update of the works of the CMI and the Convention on foreign judicial sale of ships and its recognition*, Shipping and the Law in the recent and current markets, Naples 2014, <http://www.aidim.org/documenti.html>

<sup>7</sup> Inter alia the 1989 Salvage Convention, the 1976/1996 LLMC Convention, the 1999 Arrest Convention, the 1993 MLM Convention.

<sup>8</sup> Germany, Austria, Belgium, Arab Republic of Egypt, China, Holy Seat, Denmark, Spain, Finland, United Kingdom, Greece, India, Iran, Israel, Italy, Liberia, Monaco, Norway, Poland, Portugal, Sweden, Switzerland, Uruguay, Yugoslavia, Zaire.

**TOWARDS A COMPILATION OF PRINCIPLES OF  
THE LEX MARITIMA**

*The compilation of selected principles of the Lex Maritima*  
by the CMI IWG

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## THE COMPILATION OF SELECTED PRINCIPLES OF THE LEX MARITIMA

CMI INTERNATIONAL WORKING GROUP

### *1. Background*

Maritime law is supported by a long tradition of international uniformity. In recent years, however, the development of a universal maritime legal order by the adoption of unifying conventions has slowed. At the same time general, non-maritime contract law has started to find a way to wider harmonisation.

The existence of a 'Lex Maritima' consisting of a complex of internationally accepted rules of maritime law that may be traced in particular back to usage and general principles is widely, and even increasingly, subscribed to by legal doctrine. Moreover, this view finds support in numerous elements of positive law, including case law and recently adopted national codifications of maritime law.

On the other hand, there is no instrument of practical use available in which this virtually mythical 'Lex Maritima' with all its customs, usages and principles is clearly articulated. Preparing and promoting such a compilation is quintessentially a task for the Comité Maritime International in the exercise of its research and education role, and with the broad aim of the promotion of harmonisation of maritime laws.

### *2. Scope*

The CMI IWG on the Lex Maritima should work towards the preparation of an elementary – that is, concise and flexible – description of the typical concepts and rules of maritime law that may be regarded as being internationally accepted and common to most, if not all, legal systems and traditions.

In other words, it is an exposition of the foundations of positive maritime law, such as those encountered in the conventions, national laws and the more specific and thematic self-regulating sources. This will be a search for the innermost core of maritime law, as it is expressed in the concrete, practical legal rules in daily use in the maritime and legal community.

Perhaps the main difference between the proposed restatement of principles and previous unification efforts is that the former will have to explore and focus on common ground, rather than tackle issues of disagreement and divergence that require resolution. Such a compilation of

selected general principles of maritime law could promote the satisfactory functioning of maritime law.

A CMI instrument setting out selected principles of the contemporary Lex Maritima may certainly not be allowed to have any intent of replacing existing unifying conventions, national maritime law and instruments of self-regulation, such as standard contracts. Nor may it be allowed to become a repetition or duplicate of international or European treaties or principles relating to general contract law. Even less is it to be a concise summary of existing maritime law, as it is supposed to be an attempt to sound out the shared, underlying and fundamental concepts of maritime law. For the same reason, the project will not result in a comprehensive, detailed systematisation of international maritime law in all its aspects. Finally, it is difficult to speak of general principles regarding matters that are the subject of international controversy.

### 3. *Methodology*

The exact rules that should specifically be included in a compilation of selected general principles of maritime law thus merit closer investigation and close consultations between experts and practitioners. It would therefore be premature to start summarising what the content of these rules might be. Even so, merely by way of contribution to an initial working hypothesis, the following non-exhaustive list of themes might be mentioned:

- the relationship of the principles to other law
- the recognition of self-regulation, including port custom, as source of the law
- the internationalising interpretation of conventions, legislation and contracts
- freedom of navigation
- freedom of maritime contract (subject to express mandatory rules)
- the fundamental distinguishing characteristics of the ship (in contrast among other things to a wreck)
- the application of the law of the flag to the property law status of the ship
- the function of the ship as an asset and centre of liabilities
- negligence as a maritime liability principle
- the perils of the sea and solidarity between interested parties as a rule of interpretation
- the general duty of care of contracting parties in maritime law ('due diligence')
- the essential characteristics of the various forms of chartering
- the essential characteristics of the bill of lading and the sea waybill
- the authority, powers and responsibility of the master of the ship
- the humanitarian treatment of crew and stowaways
- the advisory role of the pilot.

#### 4. *Membership*

- Eric Van Hooydonk (Belgium), Chairman
- Jesus Casas Robla (Spain), Rapporteur
- John Hare (South Africa)
- Alexander von Ziegler (Switzerland)
- Aybek Ahmedov (Russia)
- Frank Smeele (The Netherlands)
- Andreas Maurer (Germany)
- Massimiliano Rimaboschi (Italy)
- Mišo Mudri (Croatia)
- Filippo Lorenzon (United Kingdom)
- Michael Sturley (United States)
- Tomotaka Fujita (Japan)
- Gustavo Omaña Pares (Venezuela)
- Kerim Atamer (Turkey).



## CROSS-BORDER INSOLVENCY

*Coordination of Jurisdiction of Maritime Cross-Border  
Insolvency in China*  
by Beiping Chu

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## **COORDINATION OF JURISDICTION OF MARITIME CROSS-BORDER INSOLVENCY IN CHINA\***

**PROF. BEIPING CHU\*\***

China has neither adopted the UNCITRAL Model Law on Cross-Border Insolvency, nor any bilateral or multilateral cross-border insolvency convention with other countries, and there are also no particular regulations concerning maritime insolvency, which means the law governing maritime insolvency cases is not different from the ones of ordinary insolvency. Thus, like all other insolvency cases, the doctrine of concentration of jurisdiction applies in maritime cross-border insolvency cases too.

### *1. Effects of insolvency proceedings as territorial and extraterritorial*

Enterprise Bankruptcy Law of the People's Republic of China provides that: A bankruptcy case shall be under the jurisdiction of the court at the place where the debtor resides. Accordingly, the jurisdiction of maritime insolvency cases is based on the doctrine of debtor's domicile. In case of cross-border insolvency, the insolvency proceedings brought in China shall have extraterritorial effect, applying to the assets of debtor whether it is in the territory of China or not, and for the insolvency proceedings brought abroad, the Chinese court will recognize it in accordance with the principle of reciprocity with condition precedent that it does not go against the mandatory regulations and public policy of China.

### *2. Jurisdiction of Maritime Court and local Courts*

According to Special Maritime Procedure Law of the People's Republic of China and Interpretation of the Supreme People's Court on the Application of the Special Maritime Procedure Law of the People's Republic of China, maritime courts shall have exclusive jurisdiction over maritime disputes.

However, according to article 7 of Interpretation 11 of the Supreme People's Court on the Application of the Enterprise Bankruptcy Law of China, once the local intermediate court grants an application for bankruptcy, the

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\* Conference of CMI 2016, New York.

\*\* Dalian Maritime University, China Maritime Law Association.

maritime court shall issue an order to lift up the arrest of the ship. The “concentrated jurisdiction” of court hearing bankruptcy case prevails over the “exclusive jurisdiction” of maritime court. If jurisdiction challenging in maritime disputes arises, jurisdiction should be determined by the higher court. But oddly, in a collision case heard in China, the local intermediate court who accepted the insolvency petition of a shipping enterprise directly ruled that the collision claims shall be heard by the maritime court, without reporting to and waiting for direction from the higher court.

In 2014, STX Dalian Shipyard and other 5 affiliated companies filed a petition to Intermediate People’s Court of Dalian to commence the insolvency proceedings. The court entertained the case as well as the rehabilitation plan of the insolvent assets and began to arrange forced sales thereof, while the proceedings for ship arrest is still under the jurisdiction of Dalian Maritime Court.

In *Shuntion v. Alingde*, the Intermediate People’s Court of Nantong held that it is eligible to hear derivative actions of bankruptcy according to Enterprise Bankruptcy Law of China and its judicial interpretation. Its jurisdiction over derivative actions of bankruptcy is not in conflict with the exclusive jurisdiction of maritime court, since all cases derived from the bankruptcy case shall all go to the same court, no matter it is a maritime case or not.

In October 2013, Hainan Yangpu Economic & Development Zone Court entertained the insolvency application against Hainan Pan Ocean (one of the top four liners in China). During the insolvency proceeding, the bankruptcy administrator found that some of the debtor’s assets were paid to some creditors under the payment order made by the Haikou Maritime Court before the beginning of the insolvency proceeding. The bankruptcy administrator filed an application for revocation according to Article 32 of the Enterprise Bankruptcy Law, which states that “Within 6 months before the court accepts an application for bankruptcy, if a debtor is under any circumstance as prescribed by paragraph 1, Article 2 of the present Law where it makes repayment to individual creditors, its bankruptcy administrator is entitled to plead the court to revoke it, except where individual repayment may do good to the debtors’ assets.” However, due to reason that the local Yangpu Court hearing the case is on the same level of the maritime court, it could not make the ruling by itself and had to file an application for investigation to the higher court of Hainan Province. This case exposes the insufficiency of the bankruptcy law concerning the potential jurisdiction conflict in specific cases like this.

### 3. Summary

Regarding the extraterritorial effect of the insolvency procedures, recognition, and enforcement of foreign insolvency procedures, there are no

specific and practical stipulations but provision in principle. When conflicts arise between maritime procedures and insolvency procedures, on principle, the court which deals with the bankruptcy should have the jurisdiction. Also, there is still some room for improvement when it comes to international cooperation of maritime cross-border insolvency, such as collateral insolvency procedures.

## MARITIME ARBITRATION: THE NEW YORK CONVENTION AND MARITIME LAW

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## NEW YORK CONVENTION AND MARITIME LAW, PRESENTATION

LUC GRELLET\*

Since the 42<sup>nd</sup> International conference of the CMI takes place in New York, Stuart Hetherington, President of the CMI, thought that it would be a good idea to celebrate the New York Convention of 10 June 58, i.e. almost 60 years ago!

The unanimous and universal success of this convention, measured by the number of its members States (156), was actually already celebrated in New York by the United Nations for its 40th birthday on 10 June 1998<sup>1</sup>. Indeed the New York Convention has allowed the development of commercial arbitration worldwide and of a transnational arbitral culture through simple principles.

Although the object of the New York Convention is limited to the recognition and the execution of international arbitration awards, the entire system of international arbitration lies on this “*remarquable instrument*”<sup>2</sup>.

The convention was drafted in 1958 in an imperfect world of sovereign nation States. Considering that State sovereignty was – and still is – a major barrier to the development of Universal rules of law, the convention was designed to make it easier to enforce an arbitral award rendered in one country in the court of another country.

The goal was to create a worldwide simple system of enforcement of arbitral awards.

And it has worked, namely because the convention has suppressed the requirement of double recognition and organized a judicial control on the award with a limited number of obstacles to recognition.

For many years, however, the question whether the New York convention should be reviewed and amended by the United Nations, has been discussed in a number of conferences and colloquiums.

One of the main criticism was that its text is too short and incomplete for

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\* Reed Smith, Paris LLP.

<sup>1</sup> Colloquium on the New York Convention – Experience and Prospects – held in New York on 10 June 1988 United Nations, New York 1999.

<sup>2</sup> Jans Paulson: the execution of arbitration awards in tomorrow’s word. *Revue de l’arbitrage* 1998 pages 637-652.

a modern treaty: 16 articles and only 3 important: II, V and VII, and to some extent archaic.

But is it possible to review such a text that Professor E. Gaillard compared in a conference of the IAI (Institut for International Arbitration) in Dijon on 12-14 September 2008<sup>3</sup> to the wording of the Ten Commandments from the Bible's old Testament?

Emmanuel Gaillard explained in his paper that the New York Convention and the Ten Commandments have something in common: they have no preparatory works.

Not many people know, Emmanuel Gaillard says, *“that Moses started his descent down from Mount Sinai with three tables, not two. The third large stone, much bigger than the other two, contained the explanatory memorandum and the travaux préparatoires explaining the object and purpose of each commandment individually and collectively”*. But during the descent because Moses was a very old man and the tablets were heavy, he dropped the third one and the contemporary travaux were lost.

The same problem applies to the New York Convention. According to E. Gaillard, the travaux préparatoires that exist are *“quite useless, irrelevant or wrong”*. Hence *“like the Ten Commandments, we are therefore left with only the language of the New York Convention”*.

In spite of its *“biblical”* nature, I would nevertheless like briefly to present the weakness and the strengths of the New York Convention.

One of the main shortcomings of the convention is the lack of an efficient universal enforcement procedure. But it was probably too ambitious in 1958 to include procedural rules in the text.

Another weakness is that the convention imposes certain obligations on the judge of the country of enforcement but it does not impose any obligations on the judge of the place of arbitration (and it would have been beyond the scope of the convention anyway).

As Jan Paulson mentioned it during the above colloquium *“this create a problem (...) because article V (1)(2) makes it possible for courts to refuse to recognize or enforce foreign awards if they have been set aside by the courts in the country where they were rendered. (...) This exposes a potential weakness in the Convention system, by making the reliability of an award subject to local peculiarities of the country where the award was rendered”*.

One can indeed imagine – and there are examples – of annulments of awards for reasons which would not be internationally acceptable.

The reason of this weaknesses of the convention therefore results from its article V but its strengths come from article VII as we will see it hereinafter.

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<sup>3</sup> The review of International Arbitral Awards – Juris.

But at the time the convention was drafted, article V was an immense progress because it establishes a “threshold” that would be accepted over the years by more and more States and applied with the assistance and cooperation of national courts in contracting States.

The New York Convention has given to the judge of the country of the place of arbitration a prominent role as his decision to annul an award binds the foreign judge before whom the recognition of that award is sought.

And the party which has not been pleased with an award can seize that judge immediately and ask him to annul the award. This initiative provisionally stops any attempt to enforce the award before a foreign judge.

This is against the particular role of that judge that attacks against the New York Convention have been concentrated very soon.

On 21 April 1961, article IX.1. of the European Convention on international commercial arbitration has reduced the obstacles to recognition to the following:

1. invalidity of the arbitration agreement under the law to which the parties have subjected it,
2. failure to give proper notice of the appointment of the arbitration or of the arbitration proceedings,
3. award rendered beyond the terms of the submission to arbitration
4. composition of the arbitral tribunal not in accordance with the agreement of the parties.

And it has limited at article IX.2, in relations between contracting States that are also parties to the New York Convention, the application of its article V(1), the result of which was that article V (1) (e) of the New York Convention was excluded.

Hence the convention allowed European national judges to refuse to take into account the annulment of an award by a judge of the country where it had been rendered.

Of all the barriers offered by article V of the New York Convention to refuse recognition, the European Convention of 1961 has only kept the first four and eliminated (e):

*“the award has not yet become binding on the parties or has been set aside or suspended by a competent Authority of the country in which, or under the law of which, that award was made”.*

The authors of that convention did not wish to prevent the right for the judge of the place of arbitration to annul the award; but they wanted that the causes of annulment which were too closely connected with the domestic particularisms could not be imposed to other countries.

Hence Article IX of the convention deliberately attacked the system of the New York Convention, and in particular the prominence of the judge of the country of the place of the arbitration which for many should be considerably reduced.



In fact the Geneva Convention allowed that an award annulled in one country be recognized and enforced by the judge in another country.

Although the scope of the Geneva Convention of 1961 is limited, the solutions it proposes have been the basis of more modern sources of international arbitration and its influence therefore exceeds by far its application which has been limited.

It has in particular originated the movement towards a more important role of the judge before which recognition and enforcement is sought to the detriment of the judge of the place of arbitration.

The same tendency has been observed over the years and in particular in the eighties, under the New York Convention in different countries in which judges recognized arbitration awards that had been annulled by the judge of the place of the arbitration.

These countries are (to my knowledge) Belgium, The Netherlands, France and the United States.

In order to allow the judge of the place of enforcement of an award that had been annulled by the judge of the place of arbitration, to disregard the annulment of this award in spite of the provisions of article V § 1 e) of the New York Convention, French judges, who have been the first to do it, have based their reasoning on the convention itself, and in particular on article VII § 1 which says:

*“The provisions of the present Convention shall not (...) deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.”*

This clause of the convention said to be “*the more favorable rule*” allows each contracting State to adopt a more liberal regime in favour of enforcement.

It has been applied by the courts of several countries but, the French courts were the first to have used it to set aside the effects of the annulment of an award by the court of the place of arbitration.

Professor Fouchard said that this article of the convention is a “*treasury*”<sup>4</sup> because while respecting the wording and the objective of the convention, it has permitted its evolution.

Indeed thanks to article VII of the New York Convention the parties who seek the recognition of an award rendered in a foreign State, can base their application on the ground of national law when it is more favorable to the enforcement of a foreign award than the New York Convention.

This is a “*paradoxe*” but the success of the New York Convention is due

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<sup>4</sup> Ph. Fouchard «*La portée internationale de l'annulation de la sentence arbitrale dans son pays d'origine*». Rev. Arb. 1997, p. 329 of which is an expression used by A. J van den Berg.

to a large extent to this article which has permitted, under the New York Convention, the enforcement of arbitration awards in spite of its article V and of a contrary decision of the judge of the place of arbitration.

For this reason, Professor Gaillard said, in the above mentioned conference, that he would disapprove reforming the New York Convention:

*“There is a final and more local reason against reforming the New York Convention. Article VII (1) of the New York Convention permits a State court to recognize and enforce an arbitration award under the higher standards of its own laws. It is this provision which has allowed French jurists, both judges and scholars, to advance many of the important legal innovations which underpin the modern system of international arbitration and which have been adopted, in whole or in part, over the last thirty years in other State courts, national laws and arbitral institutions.”*

The solutions adopted by the French courts have led parties seeking the recognition and enforcement of a foreign award, thanks to article VII of the New York Convention, to base their application on the national laws when they are more favorable.

This is true in France since Article 1524 which refers to Article 1520 of our code of proceedings provides only 5 cases in which the judge can refuse recognition:

- the arbitral tribunal has wrongly declined its competence,
- the arbitral tribunal has not been properly constituted,
- the arbitral tribunal has failed to respect the terms of reference,
- the recognition and enforcement of the award would be contrary to international public policy.

To my knowledge, it is also true in Germany, Belgium, The Netherlands and in the United States of America.

The above comments are of course not specific to maritime law but this evolution of the French jurisprudence has certainly permitted the development of arbitration also in the Maritime field.

## **"PUBLIC POLICY", NATURAL JUSTICE, AND THE NEW YORK CONVENTION IN AUSTRALIA**

**MATTHEW HARVEY\***

### *Introduction*

International arbitration owes its success, in no small measure, to the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (known as the **New York Convention**). But the recognition and enforcement process for a foreign award can only function both in a legal and practical sense as long as the award reflects the fundamental legal norms of the state in which it is to be recognised and enforced.

To this end, the *New York Convention* requires that a foreign award not be contrary to the "public policy" of the country in which recognition and enforcement is sought. What does "public policy" mean in Australia? Does "public policy" include common law notions of natural justice? How difficult is it to invoke the "public policy" ground successfully in Australia?

### *The New York Convention and Australia*

Article V, paragraph 2, of the *New York Convention* relevantly provides:  
*Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:*

...

*(b) the recognition or enforcement of the award will be contrary to the public policy of that country.* (Emphasis added).

Although the *New York Convention* entered into force on 7 June 1959, Australia ratified it on 26 May 1975. Under the *Australian Constitution*, the ratification of a convention does not give that convention the force of law in Australia. Legislative power in such matters is given exclusively to the Commonwealth Parliament and, therefore, a convention can only become law in Australia when incorporated in an Act.

The *International Arbitration Act 1974* (Cth) (**IA Act**) gives effect to Australia's international obligations as a party to the *New York Convention*.

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The *New York Convention* is annexed to the *IA Act*. Section 8(7), which deals with enforcement, repeats some of the wording in Article V, paragraph 2(b) of the *New York Convention*.

On 21 June 1985, the United Nations Commission on International Trade Law adopted the *Model Law on International Commercial Arbitration (Model Law)*. Section 16(1) of the *IA Act* gives the *Model Law* the force of law in Australia.

While the *Model Law* deals with some matters outside the terms of the *New York Convention*, it deals directly with recognition and enforcement of awards. Thus, article 36(1)(b)(ii) provides that:

*[r]ecognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only ... if the Court finds that ... the recognition or enforcement of the award would be contrary to the public policy of this State. (Emphasis added.)*<sup>1</sup>

In the debates that led to the adoption of the *Model Law*, considerable time was given to how far the *Model Law* should depart, if indeed at all, from the *New York Convention* on the issues of recognition and enforcement. From the debates, the following is apparent. First, “public policy” was understood as broadly similar to the civilian notion of *ordre public*. Secondly, “public policy” was directed to fundamental principles and not to the particular national policies of an individual state. Thirdly, in order to achieve an international commonality of approach, “public policy” should be confined to the state’s most basic and fundamental legal norms.

Article 18 of the *Model Law* contains a principle fundamental to all arbitrations (and all curial proceedings in Australia). It provides that:

*[t]he parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.*

This principle is fundamental to the common law concept of natural justice. But in the debates there was reluctance to state explicitly that breach of Article 18 could be a ground to set aside an award for breach of public policy.

#### *Elaboration upon “Public Policy”*

When the *Model Law* was adopted, some common law countries perceived that there were two possible problems in relation to “public policy”. First, there was concern that there were possible differences in scope between the concepts of *ordre public* and public policy. The success of the *Model Law* was dependent in this respect on commonality of interpretation and application across both civil and common law jurisdictions. Secondly, because “equal treatment of parties” (dealt with in Article 18) is not directly picked up in

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<sup>1</sup> See also article 34(2)(b)(ii) of the *Model Law*, which allows for setting aside a foreign award on the ground that it is “in conflict with the public policy of this state”.

Article 36, a concern arose that its omission from Article 36 was deliberate and, therefore, "equal treatment of parties" was irrelevant to the interpretation of "public policy".

Thus, a decision was made in some common law countries to deal with these possible problems. In Singapore,<sup>2</sup> New Zealand<sup>3</sup> and Australia, laws were passed to the effect that "contrary to public policy" included obtaining an award through fraud or a breach of the rules of natural justice. Thus, in Australia, section 19 of the *IA Act* relevantly provides:

*Without limiting the generality of Article ... 34(2)(b)(ii) and 36(1)(b)(ii) of the Model Law, it is declared, for the avoidance of any doubt, that, for the purposes of those Articles, an interim measure or award is in conflict with, or is contrary to, the public policy of Australia if:*

*(a) the making of the interim measure or award was induced or affected by fraud or corruption; or*

*(b) a breach of the rules of natural justice occurred in connection with the making of the interim measure or award.*

It will be seen that section 19 seeks, on its face, neither to neither expand nor limit the definition of "public policy" but merely to make explicit the legislature's original intention.

#### *Public Policy and Natural Justice*

In *TCL Air Conditioner (Zhongshan) Co Ltd v Castel Electronic Pty Ltd*,<sup>4</sup> the Full Court of the Federal Court considered the meaning of "public policy" in the *New York Convention* and the *Model Law*. It concluded that "public policy":

*is limited to the fundamental principles of justice and morality of the state, recognising the international dimension of the context.*<sup>5</sup>

It reached this conclusion in the light of the debates, and commentary upon them, that led to the adoption of the *Model Law* and of the decisions of other common law nations (such as the United States of America, Hong Kong, Canada, the United Kingdom, Singapore and New Zealand). Therefore, particular national policies do not form part of the concept of "public policy".

The Court of Appeal of the Supreme Court of Victoria has accepted the Full Court's definition of "public policy" in *Sauber Motorsport AG v Giedo van der Garde BV*<sup>6</sup> and in *Gutnick v Indian Farmers Fertiliser Cooperative Ltd*.<sup>7</sup>

In *TCL Air Conditioner*, one of appellant's reasons for refusing

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<sup>2</sup> Section 24 of the *International Arbitration Act* (Sing).

<sup>3</sup> Article 36(3) to Schedule 1 of the *Arbitration Act 1996* (NZ).

<sup>4</sup> [2014] FCAFC 83; (2014) 232 FCR 361; 311 ALR 387.

<sup>5</sup> [2014] FCAFC 83, [76] (per Allsop CJ, Middleton and Foster JJ).

<sup>6</sup> [2015] VSCA 37; (2015) 317 ALR 786.

<sup>7</sup> [2016] VSCA 5.

recognition and enforcement on the public policy ground was that the award was made in breach of the rules of natural justice. In particular, it was argued that the arbitral tribunal made findings of fact in the absence of probative evidence. This, it was submitted, was in breach of the so-called “no evidence rule”.

There is not doubt that, in Australia, the concept of natural justice is generally expressed as two rules: the bias rule (i.e. a person must not be a judge in his or her own cause) and the hearing rule (i.e. a person should be given a fair hearing). More contentious, however, is the question whether the “no evidence rule” is a recognised rule of natural justice. There is the very highest authority in Australia that to decide a question of fact in the absence of evidence is an error of law. But this ground has its limitations. As Mason CJ said in *Australian Broadcasting Tribunal v Bond*:

*... in the context of judicial review, it has been accepted that the making of findings and the drawing of inferences in the absence of evidence is an error of law.*

*But it is said that “[t]here is no error of law simply in making a wrong finding of fact”: Waterford v. The Commonwealth, per Brennan J. Similarly, Menzies J. observed in Reg. v. District Court; Ex parte White:*

*“Even if the reasoning whereby the Court reached its conclusion of fact were demonstrably unsound, this would not amount to an error of law on the face of the record. To establish some faulty (e.g. illogical) inference of fact would not disclose an error of law.”*

*Thus, at common law, according to the Australian authorities, want of logic is not synonymous with error of law. So long as there is some basis for an inference — in other words, the particular inference is reasonably open — even if that inference appears to have been drawn as a result of illogical reasoning, there is no place for judicial review because no error of law has taken place. (Footnotes and citations omitted.)*<sup>8</sup>

Under the *New York Convention* and the *Model Law*, errors of law and errors of fact are not legitimate bases for curial intervention.<sup>9</sup> Can one circumvent this difficulty by arguing that the “no evidence rule” is also a recognised rule of natural justice in Australia?

In *TCL Air Conditioner*, the Full Court pointed out that, although there was English authority<sup>10</sup> in support of the existence of the “no evidence rule” as a rule of natural justice, there was no authoritative adoption of the rule as

<sup>8</sup> (1990) 170 CLR 321, 355 – 356).

<sup>9</sup> *TCL Air Conditioner* [2014] FCAFC 83, [105].

<sup>10</sup> *R v Deputy Industrial Commissioner; Ex parte Moore* [1965] 1 QB 456, 487 – 488 (per Diplock LJ); and *Mahon v Air New Zealand* [1984] AC 808, 820 – 821 (per Lord Diplock).

such in Australia. However, the Full Court did not stop at this point. Their Honours pointed out that the underlying premise of natural justice is not one or more black-letter rules, but the notion of fairness. They said:

*“[t]he required content of fairness in any particular case will depend on context: constitutional, statutory and human, on all the circumstances of the case ... fairness is not an abstract concept, but essentially practical. The concern of the law is to avoid practical injustice. Fairness is normative, evaluative, context specific and relative.”*<sup>11</sup>

Thus, the Full Court was prepared to accept that the making of a factual finding by an arbitral tribunal without probative evidence may reveal a breach of natural justice. The Court explained that:

*[t]his would be so when the fact was critical, was never the subject of attention by the parties to the dispute, and where the making of the finding occurred without the parties having an opportunity to deal with it. That is unfairness; the parties have not been given an opportunity to be heard. It does not follow, however, that any wrong factual conclusion that may be seen to lack probative evidence (and so amount to legal error) should necessarily, and without more, be characterised as a breach of the rules of natural justice in this context.*

Although the “no evidence rule” is not a rule of natural justice, making a decision without probative evidence may constitute practical unfairness, but it will depend on (A) whether it was a critical fact; (B) whether the parties gave this fact their attention; and (C) whether the parties had an opportunity to deal with the finding of the fact. It would seem that, in the absence of these three factors, a finding without probative evidence does not amount to a breach of natural justice. It also seems that this approach finds some basis in the “no hearing rule”.

These criteria and the limitations of the “no evidence” argument mean that the party opposing the recognition or enforcement of an award has a “hard row to hoe”. The difficulties are magnified by the obligation on the opposing party to identify clearly the breach of public policy. In *Emerald Grain Australia Pty Ltd v Agrocorp International Pte Ltd*, Pagone J said:

*The precise and careful articulation of any grounds to be relied upon in an affidavit accompanying an application is essential ... It is not sufficient, for example, to assert simply that there has been an error ... or that ‘the award is in conflict with the public policy’ of Australia or that the award was in conflict with or contrary to the public policy of Australia by breach of the rules of natural justice having occurred in connection with the making of the award.*<sup>12</sup>

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<sup>11</sup> [2014] FCAFC 83, [86].

<sup>12</sup> (2014) 314 ALR 299, 302 [7].

Finally, against the party seeking to impugn an arbitral award are the express objects of the *IA Act*, contained in section 2D:

- (a) to facilitate international trade and commerce by encouraging the use of arbitration as a method of resolving disputes; and*
- (b) to facilitate the use of arbitration agreements made in relation to international trade and commerce; and*
- (c) to facilitate the recognition and enforcement of arbitral awards made in relation to international trade and commerce; and*
- (d) to give effect to Australia's obligations under the [New York Convention] ... ; and*
- (e) to give effect to the ... Model Law ...*

As is readily apparent, the objects clearly favour the recognition and enforcement of foreign arbitral awards in Australia.

### *Conclusion*

As to the recognition and enforcement in Australia of a foreign arbitral award under the *New York Convention* and the *Model Law*, the Commonwealth Parliament has said that “contrary to public policy” includes that the award has been affected by fraud or is in breach of the rules of natural justice. Intermediate appellate courts have repeatedly said that public policy is to be limited to the fundamental principles of justice and morality of the state.

In order to establish that an arbitral award is in breach of the rules of natural justice, a party must establish that, in the context of the case, there was real unfairness and real practical injustice. This may, depending on the circumstances, include making a finding without probative evidence.

The requirements that a party resisting enforcement must articulate its grounds precisely and carefully, against a bias in favour of upholding foreign arbitral awards means this: under Australian law, a party can successfully impugn an award on the public policy ground only in the clearest and most obvious cases of breach of fundamental legal norms.

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## APPENDIX

### *A Very Brief Overview of Maritime Law in Australia*

The Commonwealth of Australia is a constitutional monarchy. It is a federation of six States (formerly British colonies), established under the *Commonwealth of Australia Constitution Act 1900* (UK). The Commonwealth of Australia is governed by the Commonwealth Parliament, which sits in Canberra. Each State has its own Parliament. The Commonwealth Parliament and most State Parliaments are bicameral, based upon the Westminster system.

The *Constitution* gives the Commonwealth Parliament the power to make



laws in relation to particular matters. The State Parliaments may make laws as to any matter as long as they are not inconsistent with Commonwealth laws. If inconsistency arises, the Commonwealth law prevails.

Australia is a common law jurisdiction, meaning that laws are made either by Parliament or by courts. Common law is subject to the laws made by Parliament. Each State has its own courts (i.e. Supreme Court, County/District Court and Magistrates’/Local Court). The Commonwealth has its own Courts (i.e. the High Court, the Federal Court and the Federal Circuit Court). The High Court is the highest appellate Court in Australia. Its decisions are binding on all Courts, both Federal and State. The Federal Court and each State Supreme Court have their own intermediate appellate courts.

There is only one common law of Australia. The States do not have their own separate common law nor is there a separate federal common law.

Under the *Constitution*, the Commonwealth Parliament is given the power to confer Admiralty and maritime jurisdiction on courts. This was taken from Article III, Section 2, of the United States Constitution.

By operation of the *Admiralty Act 1988* (Cth), Admiralty jurisdiction is conferred on the Federal Court and on the courts of the States with respect to *in personam* proceedings (i.e. claims against individuals and corporations). The *Admiralty Act* confers jurisdiction on the Federal Court and the State Supreme Courts with respect to *in rem* proceedings (i.e. claims against property, usually a ship). Thus, a small claim on a bill of lading may be heard in a State Magistrates’ Court or the Federal Circuit Court but, if one wants to arrest a ship, that proceeding may only be brought in the Federal Court or in a State Supreme Court. Practically speaking, *in rem* proceedings are nowadays only brought in the Federal Court; it has jurisdiction throughout Australia and it engages the Admiralty Marshal, who executes arrest warrants against ships.

The common law of Australia recognises maritime liens. They may arise at law to secure crews’ wages, salvage rewards and claims for damage done by a ship. There is also a statutory lien for masters’ wages and disbursements. A ship may be arrested under the *Admiralty Act* in connection with a maritime lien (as well as to secure particular defined maritime claims in certain situations). The judicial sale of a ship removes any liens attaching to that ship.

As to the carriage of goods by sea, the Commonwealth of Australia (pursuant to the “foreign affairs” power given to it under the *Constitution*) is a signatory to the Hague Visby Rules. An amended version of the Hague Visby Rules, known as the amended Hague Rules, is law in Australia by operation of the *Carriage of Goods by Sea Act 1991* (Cth). The amended Hague Rules are slightly more favourable to cargo interests than to shipowners. For example, a shipowner’s responsibility does not start and finish at the ship’s rail, it extends to the loading and discharge port limits. Further, the amended Hague Rules apply equally to a bill of lading, a sea waybill and a ship’s delivery order.

The common law doctrine of privity operates so that, in the absence of assignment or agency, a non-party cannot sue upon a contract. In common law countries, this raises a problem for consignees or holders of bills of lading or sea waybills who did not contract with the carrier to carry the goods. Since the Commonwealth Parliament is not given a power to make laws as to contracts, each State has made laws to allow consignees and holders to sue a carrier upon a bill of lading or a waybill.

The separate laws of the States largely govern the domestic and international sale of goods. Thus, in Victoria, (my home State) the *Goods Act 1958* (Vic) applies a version of the English *Sale of Goods Act 1893* to Victoria and also gives the United Nations Convention on Contracts for the International Sale of Goods the force of law in Victoria.

As to marine insurance, the *Constitution* gives the Commonwealth Parliament the power to make laws as to insurance. The *Marine Insurance Act 1909* (Cth) largely adopts the English *Marine Insurance Act 1906*.

As to safety at sea, the *Navigation Act 2012* (Cth) is the Australian version of the English *Merchant Shipping Act*.

Finally, as maritime law has developed in Australia, the courts have always had considerable regard for English decisions but, it would be fair to say, they are also developing a keen interest in the decisions of the maritime courts of Singapore, Hong Kong and New Zealand.

## **THE NEW YORK CONVENTION: THE RECOGNITION AND ENFORCEMENT OF MARITIME AWARDS IN CIVIL LAW AND COMMON LAW COUNTRIES**

LINDSAY EAST\*

The topic we are discussing today is complex, and indeed, Section C of my talk has an entire book of 900 pages devoted to the subject! Let alone countless articles, Ph.D dissertations etc., As Einstein said, “*you do not really understand something unless you can explain it to your grandmother!*” Well here goes.

*A. Pre-Award provision remedies in shipping disputes – the relationship between the New York Convention and the 1952 Convention on ship arrest*

1. The relationship between the New York Convention (the “Convention”) and the 1952 Ship Arrest Convention in relation to arrest, was, when I started practicing maritime law, a matter of some debate. Matters have now been somewhat simplified. Dealing, however, first with the Arrest Convention 1952. This Convention required only two ratifications to bring it into force, and it has been ratified by the United Kingdom. I note, from the paper of Hiro Kimura, that the Arrest Convention has not been ratified in Japan.
2. Using the Arrest Convention, it is possible to bring a claim in rem, in the Courts of England and Wales, using the criteria set out in the Convention. In England and Wales, an admiralty claim to arrest a vessel is brought “*in rem*”. The relationship between “*in rem*” and “*in personam*” claims is complex, and is discussed in Section C. So far, so good. What is the position, however, where a vessel is arrested in relation to a claim subject to an arbitration clause? The various Arbitration Acts in force in England and Wales have provided that if a contract has an arbitration clause, then, prima facie, any Court action under that contract should be stayed. The mandatory stay of such an action created difficulties for an English Court in exercising its power of arrest in the face of a non-domestic arbitration clause. In particular, the connection between arrest and a writ in rem illustrated the policy of the inappropriateness of arrest as the

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security for arbitration proceedings, see the “*VASSO*” [1984] 1 Lloyd’s Rep. 235.

3. In such conditions, a Court may not attach conditions on the stay. However, in 1978, in the “*RENA K*” [1978] 1 Lloyd’s Rep. 545, approved by the Court of Appeal in the “*TUYUTI*” [1982] 2 Lloyd’s Rep. 51, the Admiralty Court was prepared to consider attaching conditions to the release of the vessel, or refusing release where there was a likelihood that any Arbitration Award would not be met. The Arbitration Act that applied at that time was the 1975 Act, and Section 1(1) provided that a stay was to be mandatory. As Prof. Jackson has said, the legal justification for this approach seems as dubious as its commercial justification was obvious! However, the Civil Jurisdiction and Judgments Act 1982, Section 26, then made specific provisions for the retention of property arrested, if admiralty proceedings were stayed or dismissed, by reason of submission to arbitration. The Civil Procedural Procedure Rules in force in England and Wales provide generally for a stay for property to remain under arrest, or security to remain in force. However, an in rem claim form, i.e. a claim that is in fact in rem and falls within the Arrest Convention, is still a pre-requisite for the arrest.

4. The position is also now dealt with by the Arbitration Act 1996. Section 9 provides that proceedings brought in England or Wales will be stayed, unless the Court is satisfied that the Arbitration Agreement is “*null and void, inoperative, or incapable of being performed.*” (Section 9(4)). The Act goes on to deal with the retention of security in Clause 11, which specifically says that where admiralty proceedings are stayed on the grounds that the dispute in question should be submitted to arbitration, the Court may, note may, order that the property under arrest is to be retained as security for the satisfaction of any Award; or order that the stay of the proceedings be conditional on the provision of equivalent security (Section 11(1)(a) and (b)).

5. Accordingly, the position in English law is now that a vessel may be arrested under a claim in rem, despite the fact that the relevant dispute contains an arbitration clause. The Court then has a discretion either to retain the security or order that equivalent security be provided.

*B. Recognition and enforcement of maritime Awards under the Convention – corrections of imperfections?*

6. I have assumed that this topic requires a consideration of whether the English Courts have a discretion to depart from the wording of the Act in order to produce a fairer result. This is an area that deserves a whole book to itself! Indeed one book on arbitration law devotes 90 pages just to this topic! In the time available all I can do is run through a few of the issues that have been highlighted by the English Courts. You will all have been through the provisions of the Convention in relation to the recognition and enforcement of Awards. English law, under the Arbitration Act 1996, deals with the

recognition and enforcement of Convention Awards in Clauses 100 to 104. Basically, the Convention is enacted into English law and all the usual provisions apply.

7. For the purpose of this talk, therefore, I will concentrate on Clause 103, the refusal of recognition or enforcement. The grounds there have set out are familiar to you all, there are six basic provisions. As Bernard Eder observed in a recent talk, *"hell hath no fury like an arbitration lost"*. Accordingly, parties who have lost in an arbitration are quite keen to prove that they come within one of the six criteria that allow the Court to refuse enforcement of an Award.

8. I might start by observing that there is a fundamental difference between the terms *"recognition"* and *"enforcement"*, and I am going to talk only about enforcement. I also ought to point out that states that are signatories to the Convention may limit the applicability of the Convention to Awards made in other contracting states. The UK has made this reservation. I also ought to point out that the UK still recognises the Geneva Convention of 1927!

9. The prima facie rule, in English law, is that an Award which is, on its face, valid, will be enforced by our Courts, unless the Respondent raises a defence to enforcement. Once the initial procedural provisions in Section 102 of the Arbitration Act have been dealt with, we then move on to Section 103. It is important to note that it has been held that our Courts have a discretion, note discretion, to enforce an Award even if one of the grounds set out in Section 103(2) and (3) has been established. See *'China Agri Business -v- Balli Trading'* [1998] 2 Lloyd's Rep. 76. There the Court held that

*"It is clear from the terms of the statute that the refusal to enforce a Convention Award is a matter for the discretion of the Court. However, it should also be noted that the English Courts will not allow their supervisory jurisdiction over Awards to be used tactically, as a means of preserving defences to enforcement."*

See also *'Sheltam Rail Company -v- Mirambo Holdings'* [2008] EWHC 829 (Comm) and *'Malicorp -v- Arab Republic of Egypt et al'* [2015] EWHC 361 (Comm). In the latter case, the Court held:

*"(1) that the word 'may' in Section 103(2) of the Act confers a discretion on this Court to enforce an Award even though the Award has been set aside by a decision of a Court constituting a competent authority within Section 103(2)(f)."*

10. A general point is that the English Courts may consider of their own motion issues of arbitrability and public policy, see a very well known case, *'Yukos Oil Co. -v- Dardana'* [2002] EWCH Civ. 543. Further, the English Courts have held that a party need not have challenged the Award in a place where it was made, to be able to resist enforcement in the English Courts. See *'Dallah Estate -v- Ministry of Religious Affairs'* [2010] UKSC 46. In this case the Court of Appeal decided to refuse enforcement of an Award, on the basis

that the Arbitration Agreement was not valid for the purposes of Section 103(2)(b) of the 1996 Act. The interesting issue in this case was whether the Court had the power to re-open the finding of the arbitration Tribunal that the Arbitration Agreement was valid. The Court held that the application was in the nature of a re-hearing of all the relevant evidence, not merely a review of the decision of the Tribunal.

11. The first instance Judge, Aikins J., whose decision was upheld by the Court of Appeal, reasoned that the language of Section 103(2)(b) of the Act reflected that of the Convention. He rejected the argument that international comity and the general pro-enforcement approach, favoured deference to an international arbitral Tribunal's decision on its own jurisdiction. He held that despite Section 103(2)(b), the Court could conduct a full review of the findings of the Tribunal. Aikins J. then reached the opposite conclusion to the Tribunal, finding that the Government of Pakistan had proved pursuant to Section 103(2)(b) that under French law the Arbitration Agreement was not valid. Interestingly, one of the Arbitrators was Lord Mustill! The Court of Appeal said that Section 103(2)(b) was not restricted to cases where the decision of the Tribunal was obviously wrong. On the authority of the '*Dallah*' case, it would seem that the reasoning of the Court of Appeal could apply to all the sub-sections of Section 103(2). It seems as if the Paris Court of Appeal reached an opposite conclusion.

12. I should also refer to the rule in '*Fonu -v- Demirel*' [2007] EWCA Civ 799, where the Court of Appeal held that in order to obtain leave for the service of a Claim Form out of the jurisdiction, it was not necessary for the Applicant to show that there were assets of the Defendant within the jurisdiction. The Court did say, however, that they retain a discretion in relation to granting permission, "*when it is just to do so...*". Interestingly, in '*Yukos -v- OAO Tomskneft*' [2014] IEHC 115, the Irish Court declined to exercise its discretion to allow service out of the jurisdiction, one of the grounds being a lack of assets of the Defendant within the jurisdiction.

13. Having dealt with these general points, I will just run through the specific issues in relation to the defences to enforcement set out in the Convention which are, under English law, set out in Section 103(2) and (3).

*Section 103(2)(a)*

14. "*A party to the Arbitration Agreement was, under the law applicable to him, under some incapacity.*"

15. As this states, the incapacity should be judged under the law applicable to the party to the Agreement. It appears this defence has never been raised in England!

*Section 103(2)(b)*

16. "*The Arbitration Agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the Award was made.*"

17. This invalidity refers to a defect in the Arbitration Agreement, not the incapacity of the parties or arbitrability. If the parties have not indicated the governing law of the Arbitration Agreement, then the validity of the Arbitration Agreement is determined by the law of the country where the Award was made. The English Court interprets this to mean the law of the seat of the arbitration, and will have regard to that country's substantive rules of law, rather than its conflicts of law, see the '*Dallah*' case (supra).

*Section 103(2)(c)*

18. "*A party was not given proper notice of the appointment of the Arbitrator or of the arbitration proceedings, or was otherwise unable to present its case.*"

19. The English Courts have interpreted this provision as meaning that the requirements of 'natural justice' should be met. See '*Minmetals Germany -v- Ferco Steel*' [1999] CLC 647. I am glad to say that the Court was following a recent case called '*R -v- Chancellor of Cambridge University*' [1723] 1 STRA 557.

*Section 103(2)(d)*

20. "*The Award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions or matters beyond the scope of the submission to arbitration.*"

21. This refers to the obligation of the Tribunal to deal only with the matters that are referred to it under the Arbitration Agreement. The English Courts have held that where the Tribunal deals with matters that do not fall within its jurisdiction, partial enforcement of the Award may still be possible, but only where the Court can identify the area of the Award that is not outside the jurisdiction of the Tribunal. In '*IPCO -v- Nigerian National Petroleum Corporation*' [2015] EWCA Civ. 1144, a complex situation was played out. This was an exceptional case, where IPCO were successful in Nigeria in a claim for over US\$150m plus interest, now some US\$340m. NNPC challenged the Award in Nigeria on various grounds, including fraud, over a period of years. In 2005, Gross J adjourned enforcement proceedings conditional on part payment of US\$13.1m and security of US\$50m. In 2008, Tomlinson J called the delays in Nigeria, i.e. the delays by NNPC, '*catastrophic*' and allowed partial enforcement of US\$75m plus further part security. Years later, Field J refused a further application for enforcement despite evidence that the challenges would take up to 30 years to be resolved in Nigeria.

22. The Court of Appeal on 10 November 2015 had to deal with a difficult choice

(a) Ordering enforcement of the Award meant that IPCO might receive the benefit of an Award obtained by fraud;

(b) Ordering enforcement conditional upon IPCO providing security would be difficult and expensive;

(c) Refusing to order enforcement would mean IPCO not receiving any money for 30 years, making the Convention worthless.

23. The Court concluded, therefore, that the English Courts should decide the question of fraud, and sent the case back to the Commercial Court to determine this issue, and thus, the question of enforcement. The Court felt that this decision best allowed the principles of the Convention to be given effect. The Court also decided that they had power to order that the stay of enforcement was conditional on further security being provided. The Court felt that this power was part of their case management powers.

*Section 103(2)(e)*

24. *“The composition of the Tribunal of the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country in which the arbitration took place.”*

25. The only point to make here is that a Court will examine the Agreement and decide whether a party has waived any breach of the Agreement. In some cases, this may occur by the party not objecting at the outset, or within a reasonable time after the breach took place.

*Section 103(2)(f)*

26. *“The Award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.”*

27. There are three sets of circumstances here. First, an Award is generally binding as soon as the Tribunal makes it. However, the rules of arbitration may provide that it must first be approved by an arbitral institution (e.g. the ICC). Alternatively, the laws of a seat of the arbitration may require some formality to be undertaken. An Award that is annulled or set aside is no longer binding on the parties.

28. Second and third, an Award may be set aside or suspended by the Courts of the seat of the arbitration. There has been much academic debate about whether a Court should ever enforce an Award that has been set aside by a Court of the seat of the arbitration. Interestingly, the English Courts have held that they are not bound to recognise a foreign decision setting aside an Award, if that decision offended basic principles of honesty, natural justice and domestic concepts of public policy. See *‘Yukos Capital -v- Rosneft’* [2014] EWHC 1200 Comm. However, in *‘Malicorp -v- Government of the Arab Republic of Egypt’* [2015] EWHC 361, the English Courts held that where the decision of the foreign Court is entitled to recognition as a matter of English conflict of law rules, the English Court does not have discretion as to whether or not to enforce the Award. Note, it seems, that the French Courts do have power to enforce an Award that has been set aside by the Courts of the seat of arbitration, see *‘PT Putrabali -v- Rena Holding Cour de Cassation’*, Le Civile, 29 June 2007.

*Section 103(3)*

29. *“The Award is in respect of a matter not capable of settlement by arbitration.”*



30. The enforcing Court will apply its own law in deciding whether a matter is capable of settlement by arbitration or not. Under English law matters that would not be capable of settlement by arbitration would include decisions that affect the legal state of the parties; affect the legal status or rights of non-parties and are not quasi judicial - for example evaluations, mediations and appraisalment.

*Section 103(3)*

31. “Enforcement of the Award would be contrary to public policy to recognise or enforce the Award.”

32. This defence was considered in the Court of Appeal case, ‘*Westacre Investments -v- Jugo Import*’ [1998] 2 Lloyd’s Rep. 111. The Court of Appeal held that it was difficult to see why Acts, outside the fields of universally condemned activities (such as terrorism, drug trafficking, prostitution, paedophilia), or anything short of corruption or fraud in international commerce should invite the attention of English public policy, where the contracts have not been performed within the jurisdiction of the English Courts. This decision has been followed in subsequent cases. An interesting example is ‘*Pencil Hill -v- US Citta di Palermo SpA*’ (Case BA40MA109), an unreported case. The Mercantile Court in Manchester rejected an application to set aside an Order enforcing a Swiss Award arising out of a contract containing a penalty clause. The Judge noted that the clause in question did not offend Swiss law and therefore the policy in favour of enforcing international Arbitration Awards outweighed the English public policy of refusing to enforce penalty clauses. The conclusion is, therefore, that it is rare for a New York Convention Award not to be enforced for public policy reasons.

33. It would not, however, be right to leave this topic without a discussion of the EU, which is very much in the headlines at present. The English Courts have recognised that where enforcement of an Award would result in a breach of England’s treaty obligations, then it should not enforce that Award on public policy grounds. There is considerable jurisprudence on this and I do not propose to deal with it except to note that this is a concern.

34. Perhaps one final point would be to deal with the question of where the arbitral Tribunal has already ruled on the issue of public policy. Can the Court re-open the findings of the Tribunal. In a case called ‘*Soleimany -v- Soleimany*’ this was suggested as a possibility, but the majority of the Court of Appeal in ‘*Westacre*’ considered that such an enquiry would not be appropriate. In a more recent case, ‘*RVV*’ [2008] EWHC 1531 Comm, the Commercial Court preferred the ‘*Westacre*’ approach. Contrast this with the ‘*Dallah*’ case, *supra*.

*Section 66 of Arbitration Act 1996*

35. I just thought it worthwhile mentioning that Section 66 of the Arbitration Act also deals with enforcement of Awards which tend to mirror the provisions of the Convention. I do not think there is any purpose in going through these

in any detail.

36. So what is the conclusion? The conclusion is, I think, that the English Courts try to enforce the provisions of the Convention, but have also retained discretion where it seems to them that, *prima facie*, either enforcement, or non-enforcement, would be unjust. The English Courts do, however, approach the question of enforcement on the basis that the Convention should normally be applied.

*Enforcement of Maritime Awards on a vessel - legal basis*

37. Once the English Courts have recognised an Award, under the Arbitration Act 1996, the Award is enforceable as a Judgment by leave of the Judge of the High Court or by an action on the Award. Such an action traditionally, is an action in personam. In 1935, in a case called the *'Beldis'* [1936] P51, the Court of Appeal held that proceedings in rem claiming a sum payable under an Award made in an arbitration held pursuant to a Charterparty dispute, was an action brought to enforce the Award and did not arise out of the Charterparty. Accordingly, proceedings in rem were not appropriate. The action did not lie. Interestingly, in 1933, i.e. 2 years earlier, the Court of Appeal in *'Bremer Oel Transport GmbH -v- Drewry'* [1933] 1 KB 753, had held, in the context of an application for leave to serve a writ in personam out of the jurisdiction, that an action to enforce an Award was in fact based on the contract to submit disputes to arbitration. Thus the action was allowed.

38. In 1983, in the *"SAINT ANNA"* [1983] 1 Lloyd's Rep. 637, the Admiralty Court followed the *'Bremer'* case, rather than the *'Beldis'* case, stressing that in an action on an Award, the Plaintiffs had to prove the Award and the Agreement which was its basis. Therefore, if the contract containing the submission to arbitration was within admiralty jurisdiction, which was necessary, any claim on the Award was also within the admiralty jurisdiction. In the *"SAINT ANNA"*, the claim was linked to the admiralty jurisdiction through the *'admiralty'* nature of the Agreement containing the Arbitration Award. Indeed in 1981, in the *"STELLA NOVA"* [1981] Comm. LR 200, the same Judge, Sheen J., had held that an action in rem would lie to enforce a claim based on an agreement to submit disputes to arbitration provided the claim arose out of an agreement for the hire of a ship. The prerequisite for admiralty jurisdiction was, therefore, an admiralty route, so to speak, from which the claim had sprung.

39. Unfortunately, in 1999, the Commercial Court, Aikens J. in the *"BUMBESTI"* [1999] 2 Lloyd's Rep. 401 disagreed with Sheen J., holding that the *'Bremer'* case and the *'Beldis'* case were dealing with different issues and the Court was in fact bound by the decision in the *'Beldis'*. In the view of Aikens J., an action on an Arbitration Award clearly *"arises out of"* the Arbitration Agreement, but that was distinct from the substantive agreement (in this case the Charterparty) and therefore is only *"indirectly in relation to*

*the use or hire of a ship*". The alleged breach of contract had nothing to do with the use of or the hire of a ship, but was the failure to fulfil an Award.

40. There has been considerable debate about this decision, especially in Jackson on the Enforcement of Maritime Claims. He points out that the '*Beldis*' approach seems to focus on the connection (or lack) between the contract for the hire of the ship and the Award. So whether the Arbitration Agreement was "*related to*" the Charterparty never became a substantive issue. If that be so, the narrow construction of "*arises out of*" can hardly stand with the approach of the House of Lords in the "*ANTONIS P LEMOS*" [1985] AC 711, a case that I myself had the pleasure of losing in our Supreme Court! Jackson clearly feels that the decision of Aikens was wrong, but if you look at other commentators, for example, Meeson and Kimbell on Admiralty Jurisdiction and Practice, they state quite clearly that a claim arising out of an agreement relating to the carriage of goods and a ship is not wide enough to cover:

*"A claim upon an Arbitration Award made under an arbitration clause in a Charterparty. See the 'Beldis' and the 'BUMBESTI'". (Meeson 4th ed. 2011 p. 2.77)*

41. As may well be known, however, not all Courts in English speaking jurisdictions, have followed the "*BUMBESTI*". Indeed recently the Hong Kong Court in '*Handy Tankers KS -v- the ship "ALAS"*' [2014] 907 LMLN 2, the Hong Kong Court allowed the arrest of a vessel to enforce an Arbitration Award. Interestingly, they cited the "*BUMBESTI*" as justification for the arrest! The first instance decision was upheld by the Hong Kong Court of Appeal. The way the Court dealt with the issue was that the Court confirmed that the in rem jurisdiction could not be invoked for a claim based on an Arbitration Award, or Arbitration Agreement, even though the Arbitration Agreement was contained in a Charterparty - following the "*BUMBESTI*". However, the Court pointed out that the cause of action pleaded in the "*BUMBESTI*" had been expressed to be "*founded on*" an Arbitration Award. They pointed out that Aikens J. did say that the Court might have in rem jurisdiction if the claim was based on the original cause of action in the Charterparty - following the authority of the "*RENA K*".

42. The Hong Kong Court went on to say that the "*RENA K*" established the principle that a cause of action in rem did not merge in a Judgment in personam, and remained available, and that the principle applied also to arbitral Awards. The Court distinguished the House of Lords decision in the "*INDIAN GRACE NO. 2*" [1998] AC 878. The Hong Kong Court went on to say that the principle in the "*RENA K*" had been expressly approved by the Court of Appeal in the "*TUYUTI*" and the "*BAZIAS*" [1993] QB 673, and those decisions had been followed in the Hong Kong Court. In the present case, the claim of the Plaintiff was for damages for breach of, and for unpaid hire under, a Charterparty. Accordingly, the cause of action was in relation to

an agreement for use or hire of a ship, came within the relevant statutory provision for in rem jurisdiction, and the arrest was held to be valid. I understand that the New Zealand Courts came to a similar conclusion, see the *"IRINA ZARKIKA"* [2001] 2 Lloyd's Rep. 319. The case seems to indicate the importance of the pleading. The claim in this case was framed as a claim against the ship, and was issued before the Arbitration Award was issued. Thus it did not refer to a claim to enforce the Award. It has been said that the Claimant Owners, or their lawyers, deserved credit for pleading their claims so carefully! It seems to me that is an excellent commercial way of dealing with the situation and deals also with the concerns expressed by Prof. Jackson. As Jackson says:

*"it is all very convoluted, and surely the course to follow... is that the right of arrest is now recognised as continuing after Judgment, so an arbitration award on a claim attracting a lien, can be enforced by in rem proceedings"*.

43. Are there other avenues available to a Claimant seeking to enforce an Arbitration Award? In theory, there are. So long as the vessel is owned by the Judgment Debtor, then the Claimant would be able to apply for an Injunction (now called a Freezing Order) over the property, i.e. the ship. Indeed years ago this type of Injunction seemed to be common. They are no longer common, one of the reasons being that the Court considers the impact on the Injunction on third parties, that is to say Charterers and cargo interests. Nevertheless, it has been held that such an Order may be granted in relation to ships see, again, the *"RENA K"*. There is also no reason why a Judgment debtor could not obtain a writ of execution and execute this on the vessel.

## NEW YORK CONVENTION AND 1952 ARREST CONVENTION

HIROSHI KIMURA\*

*Issue 1: Pre-award provision remedies in shipping disputes – the relationship between the New York Convention and the 1952 Arrest Convention*

1. Japan has ratified the NY Convention but not the 1952 Arrest Convention. At the stage before the arbitral award is given, an available course of action to arrest a vessel is Provisional Attachment. Procedures for Provisional Attachment are prescribed by Japanese domestic legislations; such as Civil Preservation Act and Civil Enforcement Act.
2. Provisional Attachment is designed to obtain the security for the claim at the stage of pre-judgment or pre-award. In that sense Provisional Attachment is an action which is collateral to other primary action being expected to be brought in to determine valid existence and its content of the claim.
3. No particular limitation is imposed on types of the claim to be preserved by Provisional Attachment, save to say that it must be a monetary claim or such as to be so convertible.
4. The issue of whether the claim is to be adjudged at court or arbitrated at arbitration body does not affect availability of Provisional Attachment. In both cases, Provisional Attachment is available.
5. In view of the nature of Provisional Attachment functioning as preservative measure, a question has been raised whether the primary claim to be preserved by Provisional Attachment should be the one as being enforceable in Japan. On this issue there is one district court judgment. That is the Asahikawa District Court judgment dated 9 February 1996, holding that Provisional Attachment shall be granted for only such claim which is reasonably expected to be enforceable in Japan. As will be mentioned below, one of the legal sources to make a foreign arbitral award enforceable in Japan is the New York Convention.
6. The other requirement to grant Provisional Attachment is that the property to be attached is the one owned by the obligor of the claim to be preserved. The law requires the claimant to prove that the following elements have been satisfied:

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- (i) Valid existence of the claim, and
- (ii) Element of urgency

The basic principle governing the procedure to issue Provisional Attachment is promptness and secrecy. Promptness accords with provisional nature of this action and secrecy is designed to prevent the obligor from taking some evasive measures to slip out of Provisional Attachment. Thus, the law does not make it so incumbent upon the claimant to satisfy the above elements as in the case of primary action. A reasonable explanation with aid of presumptive proof suffices to discharge the burden. The *ex parte* procedure is prevalent in this type of procedure; therefore, means of proof is naturally limited to a documentary form alone.

7. Since the court issues Provisional Attachment without extensive examination upon the merit of the claim to be preserved, counter security is normally required to protect the position of the obligor in the event that damage has been incurred as a result of enforcement of Provisional Attachment which is in the end held to constitute a wrongful action. Thus the law provides for discretionary power of the court to fix the counter security in a proper amount.

The counter security shall be in form of either (i) cash or (ii) such negotiable securities as the court deems appropriate, to be more specific, a cheque of Bank of Japan, Government bonds, stocks which carry market value, etc. In addition to the above, the Supreme Court Ruling for Civil Enforcement Law sets forth that a certain form of letter of undertaking of a bank or insurance company (excluding a life insurance company) which operates business in Japan is admissible as a substitute for the above, with permission of the court.

8. The court order for Provisional Attachment contains the amount of the money to be deposited by the obligor in order to stay execution of Provisional Attachment or to cancel the one already executed. The amount is usually equal to the claim amount as alleged by the claimant. It should be noted that only cash is available means for such deposit. No other form of security device is admissible.

9. The obligor's property as provisionally attached or the substitute security money put in deposit shall remain in the hand of the court until the judgment or the award approving the claim is rendered in favour of the claimant, when the claimant will obtain an order of seizure of the property as already having been provisionally attached or of the deposited money to satisfy the approved claim (in case of the seizure of the property, that property is to be judicially sold and the sale proceeds shall be applied toward payment of the claim, whilst in case of the seizure of the deposited money, that money shall be applied to satisfy the claim).

10. As mentioned above, the claim which shall be referred to arbitration rendered outside Japan is also the one to be preserved by Provisional Attachment, provided that the award to be given in future is to be of such nature as likely being recognized and enforceable in Japan.

11. A foreign arbitral award is not automatically recognized and enforceable in Japan. It is necessary to be endorsed as having the same effect as a final and binding judgment rendered in Japan. International treaties ratified by Japan, whether bilateral or multilateral, shall give foundation to have a foreign arbitral award recognized and enforced in Japan. Of those treaties Japan has ratified the Geneva Convention and the New York Convention as well as more than ten (10) bilateral treaties. The New York Convention has been the most broadly utilized among those treaties to enforce a foreign arbitral award in Japan, although in my research there are not so many judicially disputed cases reported in respect of enforcement of foreign arbitral awards in Japan.

12. In ratifying the New York Convention, pursuant to Article I, 3 thereof Japan made reservation by declaring that it would apply the Convention to the recognition and enforcement of the awards made only in the territory of another Contracting State.

*Issue 2: Mechanisms of recognition and enforcement of maritime award – the corrections of the imperfections of the New York Convention by States Court*

1. As mentioned in the above, an arbitral award given outside Japan shall have the same effect as a final and binding judgment by virtue of the relevant international treaties, including the New York Convention, provided that the award meets the requirements as prescribed by the relevant treaties and/or the requirements set forth in the domestic law in Japan. It is considered that such international treaties, including the New York Convention, that have been ratified but for which no domestic legislation has been enacted, shall have direct application as the law in Japan.

In Japan there is the domestic legislation, namely the Arbitration Act, which provides for the requirements for the recognition and enforcement of any arbitral award, irrespective of whether the place of arbitration is in Japan or outside.

Then a question arises as to which shall have the priority over the other in respect of application for the matters concerning the recognition and enforcement of foreign arbitral award between the New York Convention and the Arbitration Act. One example is the Negative Conditions (to be defined in Paragraph 3 hereof) for the recognition and enforcement of the award, which are stipulated in both the New York Convention and the Arbitration Act as will be more specifically mentioned in Paragraph 5 below. There are different opinions among scholars; one being the view to support the sole application of the New York Convention and the other being the view to support application of the Arbitration Act. As there is no discrepancy between the provisions of the New York Convention and those of the Arbitration Act in respect of what are the Negative Conditions, this is rather academic question. However, as the international treaty shall have the priority over the ordinary domestic legislations, the New York Convention shall be applied to consider

whether there exists any of the Negative Conditions, and the Arbitration Act shall be applied only to such foreign arbitral award made in non-contracting country of the relevant international treaties.

2. In order to obtain the enforcement of a foreign arbitral award, the claimant shall file an application with the court for an enforcement order (which means an order allowing the enforcement based on the arbitral award), by specifying the obligor as the respondent. Insofar as a foreign arbitral award being merely recognized, it is not necessary to obtain any court order. Should an award meet the Positive Conditions and no contest be raised that there exist the Negative Conditions, that award shall be recognized in Japan.

3. The New York Convention sets forth the two conditions, namely (i) the conditions to affirm the recognition and enforcement of a foreign arbitral award (the “Positive Conditions”), that is Article IV, and (ii) the conditions to refuse the recognition and enforcement of the award (the “Negative Conditions”), that is Article V.

4. As for the Positive Conditions, in filing the application to obtain an enforcement order of the award the claimant shall submit (a) duly authenticated original award or a duly certified copy thereof, (b) the original agreement to refer the dispute to an arbitration or a duly certified copy thereof and (c) Japanese translation of the above (a) and (b) in case of those being written in foreign language.

A question has been raised as to whether the mere presentation of the above documents, in particular the above (b) document, does suffice to satisfy the Positive Conditions to affirm the recognition and enforcement of the award. The Tokyo District Court’s judgment dated 20 June 2001 dealt with this issue. The dispute relates to enforcement of the GAFTA arbitral award for sale and purchase of fish meal which was rendered in favour of Danish Seller against Japanese Buyer. The Seller presented the document named “Purchase Note” as being the above (b) document. The Purchase Note was prepared by the broker, who delivered the Purchase Note to the Seller and the Buyer. The Purchase Note was signed only by the broker and just had the words “G.A.F.T.A. no. 10”.

In this case, the court first ruled that the court is entitled to examine and determine whether there exists valid arbitration agreement between the parties. On that premise, it was held that having examined the evidence the court made finding that there was the valid sale and purchase contract between the parties, and the reference to “G.A.F.T.A. no. 10” in the Purchase Note had the effect of validly incorporating the arbitration clause in the G.A.F.T.A. no. 10 contract form with the result that the Purchase Note fall within the above (b) document.

5. The Negative Conditions having the effect of rejecting the recognition and enforcement of the award are stipulated in Article V of the New York Convention. In this connection, the Arbitration Act in Japan also provides for the Negative Conditions, which are designed to be applicable to all the arbitral



awards, including foreign arbitral award. The Negative Conditions stipulated in the Arbitration Act are in effect the same as those of Article V of the New York Convention.

6. Article VII of the New York Convention provides “*The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon*”. As mentioned before there are various bilateral treaties which provide for the recognition and enforcement of arbitral awards rendered in the respective countries, in which connection there has been the debate on the issue of which shall prevail over the other in its application, the New York Convention or the bilateral treaties. There are a couple of court judgments, holding that the relation between them is such that the New York Convention shall be the general law and the bilateral treaty shall be the specific law with the result that the specific law shall prevail in application. On the other hand some scholars opine that there is no such relation between the New York Convention and the bilateral treaty, and the party who seeks the recognition and enforcement shall be at the liberty to rely on either of the New York Convention or the relevant bilateral treaty. It seems to me that this later view would be more rational.

7. Competent court for the above filing is the district court which has geographical jurisdiction over the location of the subject-matter of the claim or the sizeable property of the obligor.

8. In cases where the application for the recognition and enforcement has been made, the court may dismiss such application, only when it finds to affirm existence of any of the Negative Conditions. In short, the court shall give an enforcement order, except for the case where it dismisses the application set forth in the above. In my research there appears to be no case that the application for the recognition and enforcement of the foreign arbitral award in reliance upon the New York Convention has been dismissed in Japan.

*Issue 3: Enforcement of maritime arbitration awards on a ship – legal basis*

1. Upon obtaining an enforcement order from the competent court, the claimant may apply for enforcement of the award by way of arresting a vessel owned by the obligor and carrying out judicial sale by compulsory auction.

2. A district court having geographical jurisdiction over the location of the vessel at the time of issuance of a commencement order for a compulsory auction shall have jurisdiction over enforcement of the award against that vessel.

An enforcement court shall, in order to commence a compulsory auction procedure, issue a commencement order for a compulsory auction, and direct

a court bailiff to confiscate the document proving the nationality of the vessel and any other documents necessary for navigation of the vessel (the “Certificate of the vessel’s nationality, etc.”), which confiscation shall have the effect of arresting the vessel.

3. When there is a likelihood that enforcement against a vessel shall become extremely difficult unless the Certificate of the vessel’s nationality, etc. are confiscated prior to the filing of a petition for a commencement of compulsory auction against a vessel, the district court having geographical jurisdiction over the location of the vessel’s registry or for a vessel without registry, such as a foreign flag vessel, such district courts as designated by the Supreme Court<sup>1</sup> may, upon petition, order the obligor to deliver the Certificate of the vessel’s nationality, etc. to a court bailiff. When there are pressing circumstances, a district court having jurisdiction over the location of the vessel may also issue such order.

4. As mentioned in the above, an arrest is effected by confiscating the Certificate of the vessel’s nationality, etc., which however is not the physical arrest by way of removing the custody of the vessel from her owner.

Accordingly, if the claimant deems necessary, it is possible to deprive the owner with the possession of the vessel and vest possession in another custodian by way of the claimant filing with the enforcement court an application for removal of custody of the vessel to a designated custodian. If the application is granted, a custodian, appointed by the court, takes over possession of the vessel.

5. As the granting of a sale of a ship by court auction is obtained in the *ex parte* proceedings, there may be justifiable grounds upon which the vessel’s owner may wish to challenge the court order for sale of the vessel. Accordingly, if an owner of the vessel considers the enforceability of the claim to be doubtful, it is open to it to file an application in opposition to the enforcement of the claim. In that event the owner of the vessel can seek a stay of the auction proceedings. If such a stay is granted, the vessel’s owner can request that the auction proceedings shall cease and the vessel shall be released. The court will accept such a request on condition that security, in the sum equivalent to the aggregate of all claimants participating in the auction proceedings up until the time of provision of security plus costs of the auction proceedings so far incurred, is provided.

The form of the security is in principle by cash deposit but a guarantee in the designated form by a bank or insurance company (excluding a life insurance company) operating its business in Japan is acceptable as substitution.

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<sup>1</sup> The Supreme Court has designated the twelve (12) district courts having geographical jurisdiction over the twelve main cities in Japan, namely Muroran, Sendai, Tokyo, Yokohama, Niigata, Nagoya, Osaka, Kobe, Hiroshima, Takamatsu, Kita-Kyushu and Naha.

6. If a court bailiff is unable to confiscate the Certificate of the vessel's nationality, etc. within two weeks from the day on which a commencement order for a compulsory auction has been issued, the enforcement court shall rescind the compulsory auction procedure.

7. The Civil Enforcement Law requires the vessel to be valued. The court normally appoints a firm of surveyors to appraise the vessel. Based on the valuation, the court sets the auction reserve, below which value the vessel cannot be sold at the auction. If no one places a bid in the price at or over the amount of the reserve, then another auction is held by way of lowering the reserve at a date in the future.

8. The court publicizes the auction date and the reserve, but the publication is usually limited to the locality of the auction site. As for the auction of an ocean-going vessel, prospective buyers are located all over the world, and it is in the best interests of the parties concerned that information of the auction shall be publicized world-wide.

9. As a result of the vessel being sold through the judicial auction, any and all encumbrances attached on the vessel, except for a possessory lien and a bareboat charter for a period of not more than six (6) months, shall be removed and discharged, unless a notice is filed with the court prior to the fixture of the reserve in respect of the auction price that there has been the agreement among all interested parties (including owner of the vessel, holders of mortgages, liens and other charges attached to that vessel and claimants directing claims against that vessel) to have certain encumbrances treated differently, in which event the terms of such agreement subsist and the encumbrances so stipulated will remain effective in accordance with that notice.

In the absence of the foregoing exception, the successful purchaser at auction acquires full title to the vessel free from all encumbrances. Any other claimant who has a mortgage, lien or other charge or encumbrance of any other kind on the vessel may file its claim towards the sale proceeds of the vessel, in which event the sale proceeds shall be distributed in accordance with the respective orders of priorities.

## **THE NEW YORK CONVENTION AND MARITIME ARBITRATION: A BRAZILIAN AND LATIN AMERICAN PERSPECTIVE**

**GODOFREDO MENDES VIANNA\***

### ***Introduction***

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the “New York Arbitration Convention” or the “New York Convention” (hereinafter also referred to as the “Convention”), is one of the key instruments in international arbitration.

The purpose of this paper is to give the reader an updated panorama of the current status of the Convention and its applicability in Latin America, with an overview of the ratification process in the region, based on the most recent case law related to the *exequatur* proceedings and also covering practicalities and requirements related to interim measures in connection with maritime claims referred to international arbitration.

### ***Brief Panorama of the Region in respect to the Convention***

The vast majority of Latin American countries have adhered to the New York Convention, with 22 signatory nations (including the largest economies as Brazil, Mexico, Chile and Argentina).

### **Brazil**

In Brazil, the New York Convention was enacted in 2002 through Federal Decree n° 4,311. Brazil has also ratified the Geneva Protocol on Arbitration Clauses of 1923.

The Brazilian Arbitration Act, when enacted in 1996 raised intense debate at the Brazilian Supreme Court, before an emblematic decision was rendered in 2001 declaring the constitutionality of the referred legislation. In a country where more than 100 million pending judicial claims overload the judiciary system, arbitration and ADR procedures have been an increasing trend in Brazil.

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In response to such demand, the Brazilian Congress has been dedicated to several recent bills related to updating the judicial procedures and ADR. Such bills have passed and resulted in relevant developments, such as the enactment of a new Civil Procedural Code (CPC) in 2015, which substantially reduced the number of appeals.

The reform of the Brazilian code also granted the litigants the possibility to have more flexible procedural rules where the parties together with the judge are able to tailor certain procedural steps and deadlines, narrowing the margin for interlocutory appeals, which represents a major innovation in the domestic litigation proceedings, with a clear inspiration on the arbitration autonomy concept (CPC, Articles 190 and 191).

The Congress also enacted an amendment to the Brazilian Arbitration Act and released a brand new Mediation Law. Specifically in respect to the port sector, the Congress enacted a Federal Decree (Decree 8,465/2015) regulating the use of arbitration for resolution of disputes involving private entities and the public administration, following the provisions of the Ports and Terminals Law (Law 12,815/2013).

The ratification of the New York Convention in 2002 was a major step forward for implementation of the arbitration culture in Brazil, mainly for the expansion of the international arbitration in the region – being Brazil the largest economy. Additionally, a sound evidence of such trend in commercial arbitration is the fact that Brazil was the third nation ranked in numbers of ICC Arbitration Proceedings in 2014, coming only after the United States and France.

### **Argentina**

In Argentina, the Convention was signed on August 26<sup>th</sup>, 1958; however, it came into force almost 31 years later, on 12<sup>th</sup> of June 1989, through Law No. 23,619 of October 21<sup>st</sup>, 1988. Argentina made a proviso upon ratification, providing that, based on reciprocity, would only apply the Convention to the recognition and enforcement of foreign arbitral awards from the territory of another Contracting State.

Moreover, it was determined that the Convention would only apply to disputes considered as commercial under Argentinian domestic law.

### **Chile**

Chile adhered to the Convention on September 4<sup>th</sup>, 1975 by depositing the appropriate document with the Secretariat-General of the United Nations, after ratification on July 31<sup>st</sup>, 1975 and internal approval of the text by Decree no. 664 of the Ministry of Foreign Affairs of October 2<sup>nd</sup>, 1975, published in the Official Bulletin of October 30<sup>th</sup>, 1975.

The provisions of the Convention were included in Chilean Law in the International Commercial Arbitration Act of 2004 establishing that an arbitral award, irrespective of the country in which it was rendered, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions contained in such Law.

### **Colombia**

It is also worth mentioning the scenario of the Convention in Colombia. The country's accession is dated 25<sup>th</sup> September 1979, and the instrument came into force on 24<sup>th</sup> December 1979, by Law No. 37 of 1979. Colombia's Supreme Court later declared such Law unconstitutional, on 6 October 1988. However, the Convention was not denounced and it was later re-enacted in Colombia by Law No. 39 of 1990.

The excerpt below of a decision rendered by the Supreme Court of Justice of Colombia illustrates Latin America's position in respect to the Convention:

*"The dynamics imposed by the globalization of all activities of modern society, which is characterized by an economic and cultural interconnection derived from the movement of people, goods and services, has influenced the present tendency of Private International Law to support the recognition and enforcement of decisions rendered abroad, on the basis of reciprocity – this tendency being a clear exception to the sovereign power to administer justice through the country's judicial bodies".<sup>1</sup>*

### **Enforcement of Foreign Arbitral Awards – Brazilian perspective**

In Brazil, a foreign arbitration award will only be considered valid and effective for enforcement after obtaining an *exequatur* from the Superior Court of Justice (STJ), the highest federal court with competence to rule on disputes related to federal law. The Federal Law 4,657/1942 (General Rules of Brazilian Civil Law), the Arbitration Act and the Internal Rules of the Superior Court of Justice govern the ratification of foreign awards in Brazil.

The *Exequatur* shall be requested in writing to the Superior Court of Justice, by means of a formal application. The requirements for the ratification of the arbitral award are the following:

- a. decision needs to have been rendered and issued by a competent arbitrator;
- b. proof that the defendant was duly summoned or its default legally ascertained;
- c. decision needs to be final;
- d. decision is not contrary to Brazilian public policy, national sovereignty or the dignity of the human person.

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<sup>1</sup> Supreme Court of Justice of Colombia, PETROTESTING COLOMBIA S.A. et al. v. ROSS ENERGY S.A., 27 July 2011.

It is possible to verify that the referred requirements are quite aligned with the Article VI of the Convention.

Moreover, the party requesting the *exequatur* should also present the original or certified copy of the arbitration agreement or arbitration clause. In addition, all documents must be legalized before the Brazilian Consulate and supported by a sworn translation<sup>2</sup>.

However, the decision will not be ratified if the Superior Court of Justice understands the award offend matters of public policy or that the object of the arbitration, from a legal standpoint, could not have been referred to arbitration. In this sense, Brazilian Arbitration Act only allows the use of arbitration to resolve commercial matters or others that involve negotiable rights.

As regards to proof of summons, the current position adopted by the Brazilian Courts is that service upon defendants in the arbitration should follow the provisions of the arbitration agreement or the law of the country where the arbitration agreement was executed, as long as there is unquestionable evidence that the defendant was effectively notified and had sufficient time to exercise its defence (due process of law).

After the *exequatur* is filed at the Superior Court of Justice, the opposing party will be notified and is entitled to challenge the request for ratification if it deems applicable.

One particular point regarding the recognition proceeding in Brazil is that, whether or not the respondent challenges the request, the Federal General Attorney will mandatorily intervene and render his opinion towards the legality of the proceedings and the public order aspects of such foreign award.

If there are objections to the enforcement by the Federal General Attorney or by the opposing party, the proceedings will go to trial by the panel of Justices of the Superior Court. On the other hand, if all formal requirements are met and there are no objections by the Federal General Attorney nor challenge by the opposing party, the President of the Superior Court himself shall automatically grant the *exequatur*.

Following the granting of the *exequatur* the proceedings will be forwarded to the respective local Federal Court with jurisdiction at the domicile of the debtor, where all the enforcement steps will be taken against debtor.

### ***Case Study 1 - The “HAPPY DYNAMIC” (Brazil)***

As previously mentioned, the general rule is that the Superior Court of Justice should not review the merits of the award, nor analyze the validity of the arbitral agreement, as long it does not violate matters of Brazilian public policy. In the same path, Defendant’s challenge should be limited to the formal

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<sup>2</sup> It is important to highlight that Brazil recently adhered to the Hague Apostille Convention, which came into force on August, 2016, avoiding the requirement of legalization for public foreign documents between the Contracting parties.

requirements for the ratification. Experience shows, however, that there have been deviations from such guideline and judges ruling *exequatur* are also driven to certain domestic and law principles, which may, sometimes lead to the non-recognition of foreign arbitration awards with a certain degree of intervention on the merits of the case.

In this respect, a recent decision raised a concern within the maritime industry. On December 2011, a foreign company, with headquarters in the Netherlands, agreed on a BIMCO HEAVYLIFTVOY for the chartering of the vessel “HAPPY DYNAMIC” to a Brazilian company and a voyage to be executed between Brazilian ports. The parties discussed by email the conditions of the charter agreement and Owners’ representative produced a fixture recap.

The “BIMCO Dispute Resolution Clause” inserted in such contract was not amended by the parties, neither subject to any comment during the negotiation stage.

However, the BIMCO form has never been signed, but the voyage was completed and freight was duly paid, as per contract conditions.

A detention claim, however, arose at a later stage, but charterers refused to pay. Owners initiated arbitration in London, under LMAA rules, as per the standard arbitration clause. Brazilian charterers did not appear in the London proceedings, with their default being duly ascertained by the arbitrator. Arbitrator considered the arbitration agreement as valid and awarded Owners US\$ 98,916.67 in detention charges and Owners subsequently filed for the ratification of the award before the Superior Court of Justice to enforce it against Brazilian charterers.

All formal requirements for the *exequatur* were evidenced. Brazilian charterers challenged the request, stating that the arbitration agreement was included in a contract of adhesion, therefore challenging the nature and validity of the BIMCO agreement. In order to raise such argument, Brazilian charterers claimed that award offended a matter of public policy, raising their lack of agreement with the arbitration clause, as the contract was never signed.

The Federal General Attorney rendered an opinion against the request for ratification and the panel of Justices of the Superior Court denied the *exequatur* to the English award, as per extract below:

*CHALLENGED FOREIGN JUDGMENT No. 11.593 - GB (2014/0148674-1)*

*CIVIL PROCEDURAL. CHALLENGED FOREIGN AWARD. ARTICLES 15 AND 17 OF LAW OF INTRODUCTION TO THE BRAZILIAN CIVIL CODE. LACK OF SIGNATURE ON THE CONTRACT. INEXISTENCE OF ARBITRATION CLAUSE. LACK OF JURISDICTION OF THE ARBITRAL TRIBUNAL.*

*1. In accordance with articles 15 and 17 of the Law of Introduction to the Brazilian Civil Code and articles 216-C, 216-D and 216- F of STJ's Internal Regulations, which currently govern the recognition of foreign*



*awards procedure, it is an indispensable requirement that the award were rendered by a competent authority.*

*2. Charter contract between Brazilian ports, negotiated and performed in Brazil, and not signed by Defendant. **Noncompliance with the arbitration clause written form requirement of the Brazilian Arbitration Act (article 4, subitem 1, of Law 9,307/96)**, mainly applicable to the verification of the validity of the law and jurisdiction clause (article 9, subitem 1, Law of Introduction to the Brazilian Civil Code).*

*3. In addition, **there are no elements in the records evidencing Defendant's acceptance of the arbitral tribunal's jurisdiction.***

*4. Failure to demonstrate the jurisdiction of the arbitral tribunal which rendered the foreign award precludes its enforcement in accordance with article 15, "a", of the Law of Introduction to the Brazilian Civil Code.*

*5. Recognition rejected.<sup>3</sup>*

Therefore, based on the absence of signature of the parties in the contract, the Brazilian Superior Court of Justice decided that such arbitration clause was not valid and, therefore, the award against the Brazilian charterer could not be enforced.

One relevant aspect in this case was that despite the fact that the parties had not signed the referred BIMCO standard form, the transportation between Brazilian ports occurred, the freight was paid as agreed and conditions of the charter agreement were duly negotiated by the parties, with a fixture recap being produced.

In the arbitral proceedings, the sole arbitrator appointed by the Owners under the rules of the LMAA and English law declared the arbitration agreement valid and enforceable based on the evidence brought by the claimant and standard practice of the international shipping industry. However, the Brazilian Superior Court was not convinced that the arbitration clause was expressly – or implicitly – accepted by the Defendant.

The sensitive aspect of this interesting case relies on the limits of the jurisdiction of the local Court when granting or rejecting the *exequatur* and whether the judge receiving the foreign award would be entitled to analyze the factual background, the formation and validity of the underlying contract itself.

It was ascertained by this precedent that the absence of clear evidence of the party's will to resort to the arbitration may be, under the Brazilian Courts' perspective, a concrete obstacle, sufficient enough to deny the validity of the foreign award. The rationale of this precedent case seems to rely on the public order element, where the *due process of law* as a matter of public order would

<sup>3</sup> Decision published in the official gazette on 18/12/2015. Reporting Judge Mr. Benedito Gonçalves.

enable the judge to step into the elements of formation of the underlying contracts, and investigate whether the arbitration clause was validly contracted.

As Decree 4,657/42 (article 15) also requires the foreign decision to be recognized in Brazil, be mandatorily issued by a competent judge, the STJ understood that in matters referred to foreign arbitration this aspect should also be evaluated, in the sense that the *exequatur* judge should analyze certain aspects of the case to confirm whether the arbitrator or the arbitral tribunal had jurisdiction to issue the respective award.

The reference to the Brazilian Arbitration Act is also a strong aspect of the decision, which in this case was never referred by the parties during the fixture negotiation to govern future disputes.

The Reporting Justice presented the grounds for application of the Brazilian law in this case, adopting a reasoning if the jurisdiction and law clauses were to be held ineffective, the *exequatur* should be analysed in first instance in light of the Brazilian Law, as in his view the contractual obligations were constituted in Brazil as the heavy lift transportation occurred between Brazilian ports, attracting, therefore, the local laws including the one inserted in the domestic Arbitration Act which imposes the duty to have the parties formally and expressly adhering to the arbitral agreement.

The effects arising out of this decision are a serious warning to the maritime community given that contracts such as BIMCO forms with standard clauses, widely adopted by the industry, are often not signed. The case law also shows that being the judge and the Court competent for the ratification process and not necessarily specialized in maritime disputes and with the shipping practice may also contribute for contradictory decisions as this one.

In addition to the above, the case highlights that requirements applicable under the Brazilian law and case law to recognize a valid arbitration agreement are often taken into consideration during the STJ *exequatur* analysis. Therefore, when the parties even under a typical common law contract such as the BIMCO form, if one of the parties is Brazilian or headquartered in Brazil (and/or a future award could be enforced in Brazil) the parties should adopt a sort of *civil law behaviour*, in the sense they make sure to comply with the required unequivocal evidence that the arbitral venue was freely and expressly agreed by the parties.

### ***Case Study 2 - The “PEARL REEFER” (Argentina)***

The case precedent of the “PEARL REEFER” from Argentina’s *Corte Suprema* shows a completely different view<sup>4</sup>, but also makes clear that is not only in Brazil that such controversy has been discussed.

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<sup>4</sup> Argentina No. 5, Armada Holland BV v. Inter Fruit S.A.S., Corte Suprema de Justicia, 24 May 2011. Available at <http://www.newyorkconvention.org/court+decisions/decisions+per+topic/argentina+5>.

On March 1998, Brokers representing a foreign owner forwarded a telefax to an Argentinian company confirming a charterparty for the vessel “ICE SEA”, to carry fruit from Argentina to Russia. The correspondence referred to a GENCON standard form which – as BIMCO HEAVYLIFTVOY – also provides for arbitration in London.

The “ICE SEA” was later substituted by “PEARL REEFER”, being all communications done by telefax.

When a dispute arose between the parties, Owners initiated arbitration in London, receiving a favorable award. Owners pursued an *exequatur* in Argentina before The Civil and Commercial Court of First Instance no. 11 to enforce the decision against the Argentinian Charterers.

The *exequatur*, however, was denied by the first instance since – as in the Brazilian precedent – arbitration agreement was considered as inexistent as the court understood that the parties never concluded a charterparty contract.

Owners subsequently filed an appeal and referred the matter to the Argentinian Supreme Court, which overturned the first instance decision to state that the court should not have reviewed on matters ruled by the arbitrator, as the validity of the arbitration agreement.

The Argentinian Supreme Court also stated that when analyzing the *exequatur*, court should be limited to verifying if the requirements of article IV of the New York Convention are met, without invading the jurisdiction of the foreign arbitrator.

### ***Case Study 3 - PALADIN PM x MOLNAR (Brazil)***

Despite the “HAPPY DYNAMIC” precedent, the jurisprudence of the Brazilian Superior Court of Justice is mainly favorable to ratifying foreign awards and limiting its analysis to the formal requirements provided for in Brazilian Law for the granting of the *exequatur*.

The following excerpt not only shows an arbitral award to which *exequatur* was successfully obtained, but reinforces the limits of the analysis of the Brazilian judicial authority:

*CHALLENGED FOREIGN JUDGMENT* No. 8.847 - EX (2012/0244916-3)

***RECOGNITION OF FOREIGN ARBITRAL AWARD. FORMAL REQUIREMENTS FULFILLED. IMPOSSIBILITY OF ANALYSIS ON THE MERITS.***

- 1. Foreign Arbitral Award that does not offend the national public policy and complies with the essential legal requirements for the recognition and enforcement to be granted.*
- 2. The recognition proceeding is limited by the analysis of the formal requirements. Issues regarding to the merits of the decision must not be reviewed by this Superior Court, once it goes beyond the limits established by art. 9º, of the Superior Court of Justice’s Resolution no. 9 of 4<sup>th</sup> May, 2005.*

3. *The service of summons upon a party resident or domiciled in Brazil pursuant to the arbitration agreement or to the procedural law of the country in which the arbitration took place, including through e-mail, will not be considered a violation of national public policy, as long as there is enough proof of its receipt.*

4. *Foreign Ward Recognized.*<sup>5</sup>

As to this case, the Court granted recognition of two ICC awards (a partial award on the merits of a dispute between partners in a joint venture and a final award on costs and fees) stating that the formal requirements were fulfilled and any review on the merits of the decision would go beyond its jurisdiction.

Moreover, this decision also clearly demonstrates that in cases involving arbitration, it is not required that the summons of a Brazilian party is effected by a letter rogatory as provided for in the Brazilian law, but by means accepted under arbitration agreement or by the procedural law of the country in which the arbitration took place, as long as it does not jeopardize the party's right to full defence and the due process of law principle.

### ***Interim Measures in Arbitral Proceedings***

Provisional measures are a matter of major importance in the field of arbitration and, even more, when maritime matters are involved.

Under the Brazilian Arbitration Act, interim measures may be granted by arbitrators or judges in specific situations and when satisfying certain requirements. The domestic rules on interim measures in arbitration were inspired in the UNCITRAL Model Law (Section 17), and the rules are very similar to the Model Law. In this respect, before the constitution of the arbitral tribunal, a party can seek for urgent measures from a state court in order to guarantee the useful outcome of the arbitration and the enforcement of a future award. In such a case, the plaintiff must demonstrate two general conditions to support its request, i.e. called as *periculum in mora* (danger in delay) and *fumus boni iuris* (likelihood of success on the merit of the case).

The interim measure is requested without any prejudice to the arbitration agreement and the requesting party has 30 days after the interim measure is granted to file a request for arbitration under the terms of the arbitration clause.

Once constituted the arbitral tribunal is constituted, the arbitrators have the power to maintain, modify or revoke the order granted by the State Court. In case the order is revoked, the party that requested the interim measure may be obliged to pay compensation for any losses or damages suffered by the defendant as a result of having had to comply with the interim measure.

As a practical example of the abovementioned, it is worth highlighting the following precedent, from the Superior Court of Justice:

<sup>5</sup> Decision published in the official gazette on 28/11/2013. Reporting Judge Mr. João Otávio De Noronha.

**Case Study 4 - ITARUMÃ x PCBIOS (Brazil)***SPECIAL APPEAL No. 1.297.974 - RJ (2011/0240991-9)**PROCEDURAL LAW. ARBITRATION. PROVISIONAL MEASURE.**JURISDICTION. ARBITRAL TRIBUNAL NOT CONSTITUTED.*

1. *The Arbitral Tribunal has jurisdiction to analyze and grant interim measures formulated by the parties, although limited, although, to granting custody, being unable to execute measures of coercive nature, which, should the party present any resistance to comply with the arbitrator's decision, shall be performed by the State Courts, to whom is reserved the power of imperium.*

2. ***If the Arbitral Tribunal is not yet constituted, it is admitted that the party seeks for an interim measure in the State Courts to secure the practical outcome of the arbitration.***

3. *Surpassed the temporary conditions which justify the State Courts' intervention, and considering that the arbitration agreement between the parties implicates, as a rule, the derogation of the State's jurisdiction, the proceedings shall be promptly submitted for the Arbitral Tribunal to take on the judgment of the case and, if necessary, review the granted order; upholding, amending or revoking the decision.*

4. *In situations in which the Arbitral Tribunal is shortly prevented from pronouncement, the rules of competence shall provisionally be disregarded and the request of interim measure should be submitted to the State Courts; the jurisdiction of the last is, however, precarious and not extending, only subsisting for the analysis of the preliminary injunction.*

5. *Special Appeal granted.*<sup>6</sup>

The above excerpt makes it clear how the pre-arbitral interim measure proceedings work in Brazil. The Superior Court of Justice ensured that in case the arbitral tribunal is not yet constituted, as well as when the latter is already constituted, but due to its lack of power of imperium, being prevented from enforcing coercive measures, the State Court can temporarily intervene in order to secure the practical outcome of the arbitration.

It is worth mentioning that the recent reform of the Brazilian Civil Procedural Code, a new and efficient tool was created under the name of *Carta Arbitral* (article 237), being such arbitral letter the request in which the arbitral tribunal or the emergency arbitrator will ask the cooperation of the judicial authority for the enforcement of an order or an interim relief decision when the party refuses to comply with such relief.

**Case Study 5 - NEWEDGE USA LLC (Brazil)**

In *Newedge USA LLC - v - Fluxo-Cane Overseas Limited*, the Brazilian

<sup>6</sup> Decision published in the official gazette on 19/06/2012. Reporting Judge Mrs. Nancy Andrighi.

Courts set an important precedent allowing interim relief measures during the course of the *exequatur* proceedings, which shows that despite the fact a certain award has not been recognized, STJ may grant urgent orders if the “*periculum in mora*” and the “*fumus boni iuris*” are evidenced. In this case, the order was issued to freeze and to levy execution upon debtor’s properties, and certain affiliates, by lifting the corporate veil.

This decision is a landmark in commercial arbitration in Brazil, mainly as an evidence of the value and credibility given by the STF on foreign awards and how interim measures can work towards a concrete and effective result of the future enforcement against the Brazilian debtor. Justice Pargendler granted the order as follows:

**PROVISIONAL REQUEST. RATIFICATION OF FOREIGN ARBITRAL AWARD. ARREST OF ASSETS. PIERCING OF THE CORPORATE VEIL.**

*It is admitted the granting of an urgent interim measure in the proceedings for ratification of foreign decisions is admitted (art. 4, § 3, of Resolution no. 09 of 2005, from the Superior Court of Justice).*

*The sale of assets puts the solvency of the debtor in risk and evidences the grounded fear of damage that, besides that, is also confirmed by the information, in the proceedings of request for ratification of foreign decision, that debtor is in liquidation proceedings before Eastern Caribbean Supreme Court (SEC no. 5,692, US).*

*The foreign decision, to which ratification is still pending, constitute proof of an outstanding debt (Brazilian Civil Procedural Code, art. 814).*

*Internal Interlocutory Appeal (Agravo Regimental) rejected<sup>7</sup>.*

### ***Maritime Interim Measures – Brief Comments on Ship Arrest in Latin America***

In the field of maritime law, the interim measures play an important role, such as the case of the arrest of ship, an always-urgent measure, which seeks in general to avoid the evasion of the asset able to guarantee the future satisfaction of a debt.

Under Brazilian Law, the arrest of ships is governed by the Commercial Code, dated 1850, as well as by the general rules of the Brazilian Civil Procedural Code. The arrest *in rem* is admitted based on a duly constituted maritime lien<sup>8</sup>, as well as the arrest *in personae*, being necessary for that proof

<sup>7</sup> Internal Interlocutory Appeal in the Provisional Measure 17,411/DF, Reporting Justice ARI PARGENDLER, Special Court, judged on 20.08.2014, published on 01.09.2014.

<sup>8</sup> The claims that give rise to maritime liens in Brazil are verified through a joint interpretation of the 1926 Brussels Convention and the 1850 Brazilian Commercial Code and can be listed as follows: federal taxes; legal costs and expenses; claim resulting from

of *periculum in mora* and *fumus boni juris*, i.e., the general requirements previously mentioned in this paper in respect to urgent interim measures.

Since Brazil has not ratified any of the relevant international Arrest Conventions, a ship cannot be arrested as security if Brazilian State courts do not have jurisdiction over the main claim. In order to arrest a property in Brazil, the party needs to evidence that one of the following attractive elements of Brazilian jurisdiction are met: (i) the debtor is domiciled in Brazil, whatever its/his nationality, (ii) the obligation has to be fulfilled in Brazil and (iii) the claim is grounded on a fact that took place in Brazil.

However, if parties agree on arbitration, even though the Brazilian State Courts would not have jurisdiction over the main claim, the arrest can be granted as a pre-arbitral interim measure.

The following decision is illustrative of the above:

**Case Study 6 - BORGNY DOLPHIN x ESTALEIRO MAUÁ (Brazil)**

*APPEAL No. 009564-46.2010.8.19.0002 – RIO DE JANEIRO STATE COURT OF APPEALS OF RIO DE JANEIRO – 12<sup>th</sup> CIVIL CHAMBER Arbitration Clause. Waiver of guarantee widely accepted by precedent due to the litigant's solvency. **Request for interim measure possible to be analysed by the Judicial Branch, without offending the pacta sunt servanda.***<sup>9</sup> In the case at hand, an interim measure was requested by an owner to order the delivery of an oil platform by the shipyard, which was retaining the oil platform due to an alleged default of payment under a repair contract. In the contract, the parties agreed on the foreign arbitration, however due to the urgency of the matter, the owner of the platform requested an interim measure to the State Court in order to avoid further losses. *The court understood that the jurisdictional activity as regards to the interim measures has the purpose of granting the effectiveness of the result of the future arbitral judgment, based on evidence brought by the party who seeks for such measure. In this sense, in order to preserve the object and the rights involved in a dispute, the State Courts have jurisdiction to grant or deny such pre-arbitral*

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employment of a master, crew and shipping personnel; indemnities due for salvage; general average contributions; obligations undertaken by the Captain outside the port of registry for actual maintenance needs or continuation of the voyage; indemnities due as a result of collisions, or any other sea accident; ship mortgages; port dues, other than taxes; outstanding payments due to depositaries, storage and warehouse rentals, ship equipment; expenditures for the ship and her appurtenances, maintenance expenses at the port of sale; short delivery and cargo losses; debts arising out of the construction of the vessel; expenses incurred for repairs of the vessel and her appurtenances; outstanding payment for the vessel.

<sup>9</sup> Decision published in the official gazette on 29/08/2011. Reporting Judge Mrs. Lucia Maria Miguel Da Silva Lima.

*measures, being the decision subject to the latter analysis of the arbitral tribunal, once constituted.*

In the recent amendment to the Brazilian Arbitration Act, which came into force on July 2015, article 22-A was included in such Act, expressly providing for the possibility of the parties to seek the protection of State Courts in case an urgent measure is needed, prior to institution of the arbitration panel. Such provision materializes the position of the Brazilian Courts but also confirmed that a pre-arbitral interim measure could be sought even in case the arbitration takes place abroad.

In this respect, it is important to note that article 22-A of the Arbitration Act makes no distinction in relation to the place of the arbitration, only stating that an urgent measure can be requested to the State Courts while the arbitration panel is yet to be constituted. In view of its recent enactment, article 22-A has not been tested by Brazilian Courts.

Nevertheless, the BORGNY DOLPHIN case is an important precedent for the maritime sector, as it shows that it is possible to seek interim orders - such as arrest of ships - in Brazil before the arbitration tribunal is constituted at the foreign jurisdiction.

In Mexico, the arrest of a ship is also carried out as a precautionary measure. According to the Mexican Navigation Law, the arrest should be requested to a Federal Court with jurisdiction over the case, which will be determined according to the actual location of the vessel. As requirements for obtaining the arrest, the Mexican law sets forth that the claimant needs to (i) prove its credit toward the debtor, (ii) describe the ship, (ii) prove the risk of frustration of the credit to justify the arrest, and (iv) provide a security to the court ranging from 10% to 30% of the total amount under dispute.

Arrests of ships in Mexico can be granted with basis in credits deriving from: goods, materials, provisions, fuel, equipment – including containers – supplied or services supplied to a vessel for its use, operation, conservation or maintenance.

Once granted the arrest, the claimant has a period of five working days to submit its demand for arbitration against the owner of the arrested vessel or to provide evidence that arbitration has formally been submitted to the competent jurisdiction. If claimant fails to comply with the foregoing conditions, the Mexican Court will release the vessel and the bond posted by claimant will be enforced in order to pay any loss suffered by the owner as a consequence of the arrest.

Argentina adopts a similar position and sets forth provisions for ship arrest such as interim relief to secure a foreign arbitration.

Chilean Law also allows courts to grant interim measures for disputes arbitrated abroad.

According to article 9 of Law 19,971, which enacted the Chilean International Commercial Arbitration Law, *“it is not incompatible with an*



*arbitration agreement for a party to request from a court, before or during arbitral proceedings, an interim measure for protection and for a court to grant such measure”.*

Based on the above provision, a first instance civil court of Santiago confirmed its jurisdiction to grant an interim measure to prevent the sale of a yacht under construction in a Chilean shipyard during the course of arbitration in New York between such shipyard and the owner of the yacht (based in the British Virgin Islands)<sup>10</sup>.

The Chilean shipyard challenged the jurisdiction of the state court to grant the interim measure, however the parties ended up settling the case in the international arbitration. The precedent, therefore, remains unchangeable.

### **Conclusion**

The expectation is that maritime arbitration practice will keep growing steadily in Latin American countries in the near future, being the ratification of the Convention by the great majority of the countries in that region a sound demonstration of such trend.

The Brazilian experience with recent Bills passed at the Congress giving prestige to arbitration, updating the rules of arbitration, and fomenting Alternative Dispute Resolution (ADR) tools, such as mediation, is a sound evidence that Brazil is becoming a major arbitration centre in commercial arbitration.

The Chilean compulsory arbitration system for maritime disputes has been another interesting initiative. In 1988, Chile made a substantive reform of its maritime law reflected on the new Book III of the Chilean Commerce Code. Article 1203 of the Chilean Commerce Code establishes the general principle that the resolution of any maritime dispute, including those relating to marine insurance, is subject to mandatory arbitration. In short, maritime disputes must be arbitrated, if the parties do not agree differently.

Since the introduction of the mandatory arbitration system in Chile for maritime disputes, such controversies are now better understood, more fairly ruled, and settled.

Even though Brazil is an active arbitration jurisdiction in several sectors such as energy, construction and corporate disputes, it seems that maritime arbitration is still incipient in Brazilian country, if compared with major arbitration centres such as England, the United States of America, and Singapore. However, an effort by the Brazilian maritime community has

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<sup>10</sup> Available on 26 April 2016 at <http://www.internationallawoffice.com/Newsletters/Shipping-Transport/Chile/LR-Abogados/Courts-offer-interim-measures-of-protection-for-shipping-disputesarbitrated-abroad>

already been noticed to develop new arbitration chambers and to also have the traditional chambers with subdivisions specialized in maritime and port law.

The challenge that remains for some Latin American jurisdictions is to consolidate an uniform and aligned jurisprudence on the New York Convention rules for the purpose of establishing the boundaries for the jurisdiction of the local court when ruling the *exequatur* request.

The “*Happy Dynamic*” case law from Brazil, in opposition to the “*Armada Holland BV vs Inter Fruit S.A*” in Argentina, well illustrates the instability in the region when dealing with the interpretation of the Convention.

The Brazilian Superior Court (STJ) set aside a London award with an analysis on the merits of certain contractual agreements and disqualified the arbitration clause inserted in a BIMCO form, whilst the Supreme Court of Argentina also judging a BIMCO form dispute, set article IV of the Convention as the boundary imposed to the judge of the *exequatur* which would not be in position, neither authorized to declare invalid a contract recognized by the arbitration tribunal.

It is interesting to notice that in the “*Happy Dynamic*” case although the Brazilian Superior Court of Justice (STJ) is a third instance court and therefore formed by experienced justices, it is clear that the lack of familiarity with the maritime law and practice may have contributed to the conclusions against the recognition of the award, which makes a robust demonstration why arbitration – and maritime arbitrators – should be the preferred choice for resolving such disputes.

However, in international maritime contracts and specially when dealing with shipping standard forms, in order to make sure a future arbitration award will be recognized in Latin America and in civil law countries, it might be worth having all the formalities in place, included the signature of the relevant contracts by the parties and a firm acknowledgement and acceptance of the arbitration clause, to comply with the domestic law requirements.

Finally, it is also worth mentioning that Brazil, México and Chile – as most of Latin America – although not signatories to the 1952 and 1999 Arrest Conventions, provide interesting alternatives on the possibility of arresting a ship to secure a foreign arbitration, based on its internal procedural rules and recent case law issued by the competent courts.

## POLAR SHIPPING

*International Organizations Committee and CMI/IWG on  
Polar Shipping*

by Phillip Buhler and Aldo Chircop

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*The practical consequences and challenges of oil spills -  
Lessons learned from Deepwater Horizon incident*

by David Walker

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*Declaration concerning the prevention of unregulated high  
seas fishing in the Central Arctic Ocean*

Official document adopted by the Meeting on High Seas Fisheries in the Central Arctic Ocean in 2015. Ambassador David Balton was the meeting chairman and had this circulated during the CMI meeting as background for his speech

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## **POLAR SHIPPING AND ARCTIC DEVELOPMENT SYMPOSIUM A JOINT PROGRAM OF THE USMLA INTERNATIONAL ORGANIZATIONS COMMITTEE AND CMI/IWG ON POLAR SHIPPING**

**PREPARED BY CO-CHAIRS PHILLIP BUHLER AND ALDO CHIRCOP**

The Symposium was convened under the chairmanship of Phillip Buhler (USMLA) and Aldo Chircop (CMI/IWG) to address key concerns in a changing Arctic, in particular (1) the recently adopted Polar Code, (2) civil liability for pollution from oil spills, (3) the emerging regime for fisheries, (4) issues of vessel safety and routeing, and (5) lessons from the Antarctic.

Admiral (Ret) Thomas Papp delivered the keynote address, highlighting the region as a top priority for the US and the current US Chairmanship of the Arctic Council. The US Chairmanship aims at strengthening the Council, enhancing the observer system and operationalizing regional initiatives. He highlighted the Arctic Coast Guard Forum in furthering cooperation under regional agreements for search and rescue and oil pollution response coordination. He also spotlighted the Arctic Offshore Regulators Forum, although the latter is independent from the Arctic Council. New Council initiatives concern black carbon and methane, an agreement on scientific cooperation and guidance to observers on participating more effectively.

The session on the Polar Code (1) focused on the Code's achievements, gaps and challenges (Rear Admiral Steven Poulin, Peter Pamel and Tore Henriksen as panelists and Phillip Buhler as moderator). It was noted that the Code is a first generation instrument and will need to evolve to address safety and environmental issues not yet addressed. Navigation safety will also require infrastructure development. A major challenge will be compliance. Flag states will remain primarily responsible for ensuring compliance of their ships and owners for complying with the Polar Waters Operational Manual. There are concerns at the national level. While Arctic states are expected to implement the Code, they retain the special power for pollution prevention, reduction and control under Article 234 of UNCLOS. It is unclear what the US Coast Guard will approve as an appropriate response capacity in Arctic waters under OPA 90. Enforcement jurisdiction within national waters and on the high seas will

involve different states. There is also concern that spills north of 60 degrees will also engage the liability of cargo owners.

Civil liability was considered further in the next panel (2) (Lars Rosenberg Overby, Bert Ray, David Walker and Larry Kiern as moderator). A CMI study on liability for oil spills in the Arctic was presented, highlighting particular concern on what measures are considered to be reasonable under the international compensation regimes when the damage is in a remote location and absent sufficient response capacity. The liability framework in the US, which is not a party to the international regimes, was also outlined, underscoring potential unlimited liability. The discussion expanded to include civil liability in the context of offshore oil and gas development, drawing on lessons from Deep Water Horizon in the Gulf of Mexico for the development of hydrocarbons in the Arctic. The need for close cooperation and coordination of available assets, especially considering the sparse infrastructure in the Arctic was noted. The time, effort and expense to sort out civil liability issues in the US under OPA 90 following a major oil spill are enormous and there is danger that the Deep Water Horizon experience might be repeated in Arctic waters.

While there is no major commercial fishery in the central Arctic Ocean (3), the expectation is that there are prospects for future development with migration of species to northern waters. There is a broadly held view that there should be no commercial fishing in the Central Arctic Ocean until a Regional Fisheries Organization is established, as in other regions. Ambassador David Balton noted that there is an opportunity to anticipate the development of commercial fishing by putting in place a framework for fisheries cooperation involving regional states and major distant water fishing states. The recent Declaration on the Prevention of Unregulated Fishing in the Central Arctic Ocean, 2016 is an important step in this direction. Also relevant is the current initiative to establish an international legal framework for areas beyond national jurisdiction addressing biodiversity conservation and equitable sharing of benefits.

The discussion on vessel safety (Rear Admiral Frederick Kenny, Aldo Chircop, Peter Cullen) and routeing (Alexander Skaridov) (4), highlighted gaps in polar shipping regulation and subregional cooperation and challenges for operators that might need to be addressed. The discussion benefitted from a presentation on the IMO's legal structures, processes and procedures for the amendment of the international maritime conventions and the development of instruments of guidance under them. The IMO is responsible for 53 treaties and protocols that are serviced through this system. One of the potential gaps identified is the absence of load lines for polar shipping, a matter on which the International Convention on Load Lines is silent and that was not addressed in the Polar Code and the IACS Unified Requirements for Polar Shipping. The CMI International Working Group on Polar Shipping is studying this matter. Seaworthiness in a polar shipping context was also considered from a private

maritime law perspective and specifically with consequences for contracts of carriage including bills of lading and charter parties, insurance, regulations, etc. The Polar Code elevates the applicable standards of fitness to a new level described as “polarworthiness” – posing challenges for owners, operators, regulators and shipping interests in meeting and abiding by such standards. Further discussion explores whether there is a need for cooperation on navigation safety and environment protection in the Bering Strait before maritime traffic increases. At this time there are parallel routes through Russian and US waters and there is reason to consider cooperation through vessel traffic control systems and traffic separation zones in the most vulnerable parts of the Strait.

The final session on the Antarctic (5) (David Baker) focused on the environmental liability regime for that region. In 2005, the Antarctic Treaty Consultative Parties adopted Annex VI to the Protocol titled Liability Arising from Environmental Emergencies and which is not yet in force. The discussion highlighted the costs of response action to environmental emergencies arising from activities in the Antarctic Treaty Area and incident data and insurance cover for vessels operating in those waters. The Annex has gaps, but they are likely covered by the IMO liability and compensation regimes.

## **THE PRACTICAL CONSEQUENCES AND CHALLENGES OF OIL SPILLS - LESSONS LEARNED FROM DEEPWATER HORIZON INCIDENT**

**DAVID WALKER**

You are justified in wondering whether I have wandered into the wrong room to make a presentation on a view from the Gulf of Mexico as part of this Arctic Shipping Day panel. My co-panelists have ably set out the legal civil liability regimes applying to shipping and oil exploration activities in the Arctic region. Bert Ray, in particular, has summarized the U.S. liability regime and vividly illustrated for you the daunting challenges which could be expected to arise after any significant oil spill off the Alaskan coast. My presentation will hopefully provide a U.S. Gulf of Mexico historical perspective based on the major offshore oil spill incidents in that area.

First, let me indulge in a bit of pre-Oil Pollution Act history. On June 3, 1979, a blowout and fire involving the Ixtoc 1 well and the drilling unit SEDCO 135 occurred. The location was approximately 38 miles offshore Mexico in the Bay of Campeche. See if this sounds familiar – the blowout preventer failed and it took approximately 9 months to cap the affected well resulting in a total spillage estimated at 3.1 million barrels of oil. Spilled oil migrated across the Gulf of Mexico and ultimately fouled the shoreline of the Texas coast. The SEDCO 135's owner filed a limitation of liability petition in a Texas federal court under The Limitation of Liability Act<sup>1</sup>. All claimants, including the U.S. government, were required to lodge their claims against the rig owner in that court. The claims arising from the incident reportedly exceeded \$100 million (how inconsequential that figure sounds in the present day context!).

Somewhat remarkably, it took the orders of magnitude smaller 1989 oil spill from the tanker EXXON VALDEZ in Alaska's Prince William Sound to create the political environment leading to the passage of the Oil Pollution Act of 1990 "OPA"<sup>2</sup>. Undoubtedly, the fact that the EXXON VALDEZ spill

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<sup>1</sup> 46 U.S.C.A. § 30501 – 30512.

<sup>2</sup> 33 U.S.C.A. § 2701-62.

occurred in a near pristine area of Alaska profoundly affecting Alaskan wildlife played a part. Does this history present a cautionary tale when evaluating future offshore drilling efforts in the Arctic?

The most far reaching and comprehensive application of the post-OPA 90 civil liability regime has been in the context of another well-known Gulf of Mexico oil spill incident. More than six years ago, on April 20, 2010, a blowout of the Macondo well being drilled by the drill ship DEEPWATER HORIZON occurred. The resulting explosion and fire initially caused 11 deaths and 17 personal injuries. As with the Ixtoc 1 casualty, the blowout preventer failed to shut off the Macondo well, and the oil flow continued for 87 days. For many of those days, a national audience could watch a live 24 hour television camera feed of the oil flow. There has been a judicial determination that 3.19 million barrels of oil spilled from the Macondo well into the Gulf of Mexico following the blowout.

Unlike the situation in Alaska, availability of resources to combat the DEEPWATER HORIZON spill was not an issue. Between 48,000 and 55,000 individuals were involved in some part of the response. It has been reported that on the single most demanding day of the response, 6,000 vessels, 82 helicopters, and 47,849 individuals were working the spill. An estimated 9,000 vessels, including 2 drilling ships, numerous oil containment vessels, and flotillas of support vessels and skimmers, were ultimately involved<sup>3</sup>.

Environmental conditions were not an issue either and the responders used every available technique. There was in situ burning, application of approximately 1.8 million gallons of dispersant both above and below the ocean surface, surface skimming, and the deployment of 10.4 million feet of sorbent boom and containment boom for shoreline protection. The U.S. federal civil liability regime as described by Bert Ray has been applied to the myriad claims arising out of the Macondo blowout. The federal Fifth Circuit Court of Appeals with appellate jurisdiction over Texas, Louisiana, and Mississippi has held that state oil pollution laws are preempted when an oil spill originates outside state territorial waters, even though the spill affects state waters<sup>4</sup>. That Fifth Circuit ruling is not binding on Alaska which is covered by the federal Ninth Circuit Court of Appeals.

Many, many lawsuits arising out of the Macondo blowout were filed in various United States federal and state courts. Most of those lawsuits were consolidated for handling in a multidistrict consolidated case “MDL” before Judge Barbier in the federal U.S. District Court for the Eastern District of Louisiana in New Orleans.

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<sup>3</sup> “On Scene Coordinator Report Deepwater Horizon Oil Spill September 2011”.

<sup>4</sup> *In re Deepwater Horizon*, 745 F.3d 157 (5th Cir. 2014), cert. denied, 135 S.Ct. 401 (2014).



Now, more than six years after the event, the MDL litigation is winding down. The legal twists and turns to this point are too complex and lengthy to discuss in detail today. As an indicative factor of the sheer volume of claims and issues involved, one can cite to the MDL electronic docket (a list of the parties, their lawyers, and individual filings related to the litigation) which as of this writing exceeds 1,850 pages and includes more than 16,500 individual entries.

On April 4, 2016, Judge Barbier signed and entered a Consent Decree (a form of agreed judgment) between the United States of America, the individual U.S. Gulf states of Alabama, Florida, Louisiana, Mississippi and Texas on the one side and BP Exploration and Production “BP” and its financial guarantors on the other. The Consent Decree implements a settlement first proposed in July of last year. The April 4, 2016 Consent Decree resolves the United States and the individual Gulf states’s Macondo blowout related claims against BP for civil penalties, resource damages, response costs and other damages.

The financial obligations assumed by BP in the Consent Decree are staggering. First, a Clean Water Act<sup>5</sup> civil penalty of \$5.5 billion is assessed against BP. This amount is to be paid in annual installments during the years 2017 through 2031, at \$379,310,445 per year, except for 2018, when a mere \$189,655,117 is owed. The Consent Decree provides that the amounts to be paid are not to be tax deductible.

Natural Resource Damage Assessment “NRDA” claims are resolved for \$7.1 billion payable by BP to United States and the U.S. Gulf states. Again, a payment schedule is set out under which BP is required to pay \$489,655,172 annually from 2017 through 2031 except in 2018 when a mere \$244,827,586 is owed. Additional provisions are made for the payment of interest. Another \$232 million payment to the United States will come due on the 16<sup>th</sup> anniversary of the effective date triggering the payment plan. Another \$350 million (less a \$10 million credit for a past payment) is payable between 2016 and 2031 for past federal and state NRDA related costs.

There is a provision for an additional \$250 million payment to the United States representing a \$167.4 million reimbursement to the Oil Spill Liability Trust Fund and \$82.6 million to resolve United States claims under the False Claims Act<sup>6</sup> and the Federal Oil and Gas Royalty Management Act<sup>7</sup> (representing BP’s share of lost royalty payments on the oil spilled between April and July of 2010). The payment schedule calls for \$40 million to be paid this year and then \$30 million a year from 2017 through 2023.

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<sup>5</sup> Federal Water Pollution Control Act of 1972, 33 U.S.C.A. § § 1251-1387, as amended by the Water Quality Act of 1987, 33 U.S.C.A. § § 1281-1285, 1311-1387.

<sup>6</sup> 31 U.S.C.A. § 3770(b)(1).

<sup>7</sup> 30 U.S.C.A. § 1756.

The Consent Decree includes stipulated additional penalties which would come into play for acts of noncompliance with the agreed requirements, including the payment requirements. BP's total tab (amounts paid and obligated to pay in the future) related to the Macondo blowout is presently estimated to exceed \$55 billion, not including all the legal and other transactional costs of reaching this result. Transocean, Haliburton, Anadarko and MOEX have also paid or agreed to pay large, but not comparable, amounts of money to resolve their parts of the litigation.

In some senses, the U.S. civil legal liability regime has for the most part worked as intended in the aftermath of the Macondo blowout. Legal responsibility has been settled or assessed, claims have been examined and concluded, and court opinions have resolved disputed or novel legal issues. However, many, many other outstanding issues will still have to be resolved before the Macondo blowout book is finally closed.

Certain foreign claimants might disagree with my assessment. In September 2010, the Mexican States of Veracruz, Tamaulipas, and Quintana Roo initially filed lawsuits in the Western District of Texas federal court in El Paso seeking to recover damages sustained or expected to be sustained as a result of the Macondo oil spill. The cases were consolidated in the Louisiana MDL action before Judge Barbier. The Mexican States initially ran afoul of a restriction included in OPA. Recovery under that statute for losses not otherwise compensated is available when the recovery is authorized by treaty or executive agreement between the United States and the claimant's country, or the Secretary of State, in consultation with the Attorney General and other appropriate officials have certified that the claimant's country provides a comparable remedy for United States claimants<sup>8</sup>. The Mexican States were unable to show a countervailing right in favor of United States' claimants so their claims under OPA were dismissed. The Mexican States' remaining claims were later also dismissed because, under the U.S. court's interpretation of Mexican law, the Mexican federal government owns the allegedly damaged resources so that the individual Mexican States did not hold a sufficient "proprietary interest" in those resources to assert claims for damage. On appeal, the Fifth Circuit upheld Judge Barbier's lack of standing ruling<sup>9</sup>. A subsequent lawsuit filed on behalf of the United Mexican States making similar claims appears to still be pending but its status or disposition is unclear.

One central feature of the Arctic discussion is the fact that several nations have coast lines bordering the Arctic waters and their interests have to be harmonized to the extent possible. In the Gulf of Mexico context, this means the United States, the United Mexican States, and the Republic of Cuba.

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<sup>8</sup> 33 U.S.C. § 2707(a)(1).

<sup>9</sup> 784 F.3d 1019 (5th Cir. 2015), cert. denied, 136 S.Ct. 536 (2015).

Following the Ixtoc 1 spill, the United Mexican States and the United States entered into an “Agreement of Cooperation between the United States of America and the United Mexican States regarding pollution of the marine environment by discharges of hydrocarbons and other hazardous substances” that entered into force in 1981. That agreement called for the establishment of a framework for joint Mexican/U.S. responses to marine pollution events. Twenty years later, the MEXUS plan was agreed. The MEXUS plan established the framework for bilateral cooperation with respect to pollution incidents that could affect both countries or a pollution incident affecting one country sufficient to support a request for assistance from the other country. Non-binding annexes, (MEXUSGULF and MEXUSPAC) have since been put in place. Multiple bilateral oil spill drills have been held under the MEXUS plan.

In 2012, the United States and Mexico signed the U.S. Mexico Transboundary Hydrocarbons Agreement. The Agreement entered into force in 2014. This Agreement covers two areas of international waters in the Gulf of Mexico straddling the maritime boundary between Mexico and the United States. These two areas are known as the “Western Gap” and “Eastern Gap”. The purpose of the 2012 agreement was to preserve the opportunity for a coordinated approach to drilling in waters beyond the 200 mile EEZs of the U.S. and Mexico within the Western Gap and Eastern Gap areas. A number of offshore blocks within the U.S. side of the Western Gap have been leased. How would an oil spill affecting these areas be handled? A complicating factor is that Cuba has also asserted a claim to the waters in the “Eastern Gap”.

Mexico, the U.S., and Cuba are also participants in the “Wider Caribbean Region Multilateral Technical Operating Procedures for Offshore Oil Pollution Response dated March 2014”. This document establishes non-legally binding guidance on response procedures and provides details of each participating country’s key organizational contacts. That agreement was entered into under the aegis of the Cartagena Convention<sup>10</sup> and the “Protocol Concerning Cooperation in combating oil spills in the wider Caribbean Region”. Again, U.S., Cuba and Mexico are all parties to the Cartagena Convention and these protocols. There is not however, any binding bilateral agreement between the U.S. and Cuba regarding oil spill response or legal liability.

Although there does not appear to be an active drilling program in Cuba at this time, prior drilling efforts raised alarm in the United States, particularly in Florida, regarding the potential effects of an oil spill originating in Cuban waters. One of the issues of concern was that an oil spill emanating from Cuban waters would not be covered by OPA 90 remedies. It is worth

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<sup>10</sup> Convention for the Development and Protection of the Marine Environment of the Wider Caribbean Region (Cartagena Convention 1983).

remembering that BP, although a non-U.S. company, was subjected to OPA 90 liability for the Macondo blowout spill because its business operations were conducted within U.S. waters. Without the applicability of OPA 90 remedies, the Oil Spill Liability Trust Fund would have to address claims resulting from a spill emanating from Cuban waters. The amount available from the U.S. Oil Spill Liability Trust Fund would clearly be inadequate to address claims resulting from a major offshore oil spill.

A Florida senator last August introduced a bill in the United States Senate, the “Caribbean Oil Spill Intervention, Prevention and Preparedness Act”<sup>11</sup>. The primary purpose of this bill would be to authorize the U.S. Coast Guard to act in waters beyond the U.S. jurisdiction in case of a grave and imminent threat of crude oil pollution by sea from a ship or a drilling rig. Among other provisions, the proposed law would require the U.S. Coast Guard to refrain from unnecessary interference with any foreign state in whose waters an action must be taken. Sec. 204 of the bill would require U.S. Coast Guard to take steps to plan for oil spill response plans to deal with oil spills in the Gulf of Mexico or Florida straits originating outside U.S. territorial jurisdiction. Presumably, this bill is still before the Senate Committee on Commerce, Science and Transportation and it is unclear whether it will be enacted.

More recently, on November 24, 2015, the United States and the Republic of Cuba issued a joint statement on cooperation on environmental protection<sup>12</sup>. These parties listed the following as one of the actions they are committed to pursuing:

2.D- Prevention of oil spills and hazardous substances pollution through strengthened environmental regulation and control of offshore energy and oil and hazardous substance pollution, as well as through cooperation on oil spill preparedness and recovery and response capacity.

This statement of good intentions has not so far resulted in concrete action and it is unclear whether the recent improvements in U.S. relations with Cuba will survive after our elections this November. The absence of a bilateral agreement with Cuba regarding oil pollution spill response and civil liability is something which should be addressed and resolved.

How does the Gulf of Mexico experience inform what may come in Arctic waters offshore Alaska? We are always best prepared to fight the last war. No one knows how oil exploration and drilling in the Arctic will develop in the future. The harsh environment and relative scarcity of resources are likely to remain with us for the foreseeable future. It would behoove the

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<sup>11</sup> 2015 CONG US S 1999 (August 5, 2015).

<sup>12</sup> “Joint Statement between the Republic of Cuba and the United States of America on Cooperation on Environmental Protection” <http://www.state.gov/e/oes/rls/pr/249946.htm>.

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*The practical consequences and challenges of oil spills, by David Walker*

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nations with a stake in the Arctic to maintain close cooperation and coordination of all available assets and resources to be as ready as possible to respond to a common peril. The U.S. civil liability regime has been tried and tested after DEEPWATER HORIZON and, for the most part, has worked. However, the time, effort, and expense required to sort out civil liability issues in the U.S. legal system under the OPA civil liability regime following a major oil spill have proven to be enormous. Unfortunately, a similar process is likely be repeated - should a major Arctic oil spill affecting Alaskan Arctic waters ever occur.

## **DECLARATION CONCERNING THE PREVENTION OF UNREGULATED HIGH SEAS FISHING IN THE CENTRAL ARCTIC OCEAN<sup>1</sup>**

Meeting in Oslo on 16 July 2015, Canada, the Kingdom of Denmark, the Kingdom of Norway, the Russian Federation and the United States of America continued discussions toward the implementation of interim measures to prevent unregulated fishing in the high seas portion of the central Arctic Ocean. They adopted the following Declaration:

We recognize that until recently ice has generally covered the high seas portion of the central Arctic Ocean on a year-round basis, which has made fishing in those waters impossible to conduct. We acknowledge that, due to climate change resulting in changes in ice distribution and related environmental phenomena, the marine ecosystems of the Arctic Ocean are evolving and that the effects of these changes are poorly understood. We note that the Arctic Ocean ecosystems until now have been relatively unexposed to human activities.

We recognize the crucial role of healthy marine ecosystems and sustainable fisheries for food and nutrition. We are aware that fish stocks in the Arctic Ocean may occur both within areas under the fisheries jurisdiction of the coastal States and in the high seas portion of the central Arctic Ocean, including straddling fish stocks. We note further that the ice cover in the Arctic Ocean has been diminishing in recent years, including over some of the high seas portion of the central Arctic Ocean.

We recognize that, based on available scientific information, commercial fishing in the high seas portion of the central Arctic Ocean is unlikely to occur in the near future and, therefore, that there is no need at present to establish any additional regional fisheries management organization for this area. Nevertheless, recalling the obligations of States under international law to cooperate with each other in the conservation and management of living marine resources in high seas areas, including the obligation to apply the precautionary approach, we share the view that it is desirable to implement

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<sup>1</sup> Official document adopted by the Meeting on High Seas Fisheries in the Central Arctic Ocean in 2015. Ambassador David Balton was the meeting chairman and had this circulated during the CMI meeting as background for his speech.

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*Declaration concerning the prevention of unregulated high seas fishing in the Central Arctic*

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appropriate interim measures to deter unregulated fishing in the future in the high seas portion of the central Arctic Ocean.

We recognize that subsistence harvesting of living marine resources is ongoing in some Arctic Ocean coastal States, and that traditional and local knowledge exists among the users of these resources. We desire to promote scientific research, and to integrate scientific knowledge with traditional and local knowledge, with the aim of improving the understanding of the living marine resources of the Arctic Ocean and the ecosystems in which they occur. We also recognize the interests of Arctic residents, particularly the Arctic indigenous peoples, in the proper management of living marine resources in the Arctic Ocean.

We therefore intend to implement, in the single high seas portion of the central Arctic Ocean that is entirely surrounded by waters under the fisheries jurisdiction of Canada, the Kingdom of Denmark in respect of Greenland, the Kingdom of Norway, the Russian Federation and the United States of America, the following interim measures:

- We will authorize our vessels to conduct commercial fishing in this high sea area only pursuant to one or more regional or subregional fisheries management organizations or arrangements that are or may be established to manage such fishing in accordance with recognized international standards.
- We will establish a joint program of scientific research with the aim of improving understanding of the ecosystems of this area and promote cooperation with relevant scientific bodies, including but not limited to the International Council for the Exploration of the Sea (ICES) and the North Pacific Marine Science Organization (PICES).
- We will promote compliance with these interim measures and with relevant international law, including by coordinating our monitoring, control and surveillance activities in this area.
- We will ensure that any non-commercial fishing in this area does not undermine the purpose of the interim measures, is based on scientific advice and is monitored, and that data obtained through any such fishing is shared.

We recall that an extensive international legal framework applies to the Arctic Ocean. These interim measures will neither undermine nor conflict with the role and mandate of any existing international mechanism relating to fisheries, including the North East Atlantic Fisheries Commission. Nor will these interim measures prejudice the rights, jurisdiction and duties of States under relevant provisions of international law as reflected in the 1982 United Nations Convention on the Law of the Sea, or the 1995 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly

Migratory Fish Stocks, or alter the rights and obligations of States that arise from relevant international agreements.

In implementing these interim measures, we will continue to engage with Arctic residents, particularly the Arctic indigenous peoples, as appropriate.

We intend to continue to work together to encourage other States to take measures in respect of vessels entitled to fly their flags that are consistent with these interim measures.

We acknowledge the interest of other States in preventing unregulated high seas fisheries in the central Arctic Ocean and look forward to working with them in a broader process to develop measures consistent with this Declaration that would include commitments by all interested States.



## LIABILITY FOR WRONGFUL ARREST

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## INTRODUCTORY REMARKS

SIR BERNARD EDER

1. As appears from the Summary Tables prepared by Dr Aleka Mandraka-Sheppard, the legal position with regard to liability for wrongful arrest varies widely between different jurisdictions and, in certain jurisdictions at least, is unsatisfactory.
2. It is my submission that the position in England – which dates back to the decision of the Privy Council in the *Evangelismos* in 1858 – is particularly unsatisfactory and requires urgent reform. In particular, the law in England is too favourable to an arrestor for the following reasons.
3. First, provided that the claim is one which falls within one or more of a stipulated list of claims as defined by statute (Supreme Court Act 1981), the claimant has a legal right to arrest the relevant ship. Importantly and in contrast to the position with regard to the grant of an injunction, the Court has no discretion to refuse the issuance of a warrant of arrest in such circumstances.
4. Second, it follows that there is no requirement for any “link” between the original claim and England.
5. Third, because the Court has no discretion, there is no requirement for the claimant to give full and frank disclosure on the application to obtain a warrant of arrest. This is again in contrast to the position with regard to the grant of an injunction.
6. Fourth, the claimant does not have to show that the claim passes any relevant legal threshold; and there is no assessment of the strength of the claimant’s case. Thus, there is no requirement for the claimant to show that the claim is likely to succeed or even that the claimant has a “good arguable case”.
7. Fifth, there is no requirement of proportionality between the claim and the value of the arrested ship. Thus, a claimant may arrest a ship worth (say) US\$20 million for a claim worth (say) US\$100,000 – or even less.
8. Sixth, again in contrast to the position with the grant of an injunction, there is no assessment of the “character” of the defendant and no requirement to show any risk of dissipation by the shipowner.
9. Seventh, there is no requirement for the claimant to give advance notice of any intention to arrest the relevant ship. Nor is there any requirement for the claimant to follow any pre-action protocols.
10. Eighth, the claimant is not required to give any cross-undertaking in damages. This is again in contrast to the position with regard to the grant of

an injunction when it is a standard requirement that the claimant must give a cross-undertaking in damages and, if necessary, fortify such cross-undertaking with appropriate security.

11. Ninth, the claimant is not liable to compensate the owner of the ship for losses caused by the arrest (even where the claim fails) unless it can be shown that the claimant acted in *bad faith* or was guilty of *crassa negligentia*. This is the rule based on the *Evangelismos*. The rationale of that rule is uncertain. To the extent that it is based on an analogy with the arrest of individuals by the police, such analogy is false. In that public law context, it is understandable why the police should not be exposed to any claim for damages unless they have acted in bad faith. But the arrest of a ship is entirely different: it is made in pursuit of a private law claim. In principle, there is no reason why the relevant rules should be any different from those applicable to the grant of an injunction.

12. For all these reasons, I believe that English law is unjust – and should be changed. And that is why I have been campaigning to change the law in this context for some 30 years. To date, I have failed. But that is no reason to give up. At the very least, I strongly believe that the law with regard to arrest should, in effect, be aligned with the law regarding the grant of injunctions (in particular, freezing injunctions).

13. I would hope that success may yet be achieved if agreement can be reached at the international level on a standard approach.

## WRONGFUL ARREST IN SOUTH KOREA\*

PROF. IN-HYEON KIM\*\*

### I. *International Convention & relevant law*

The Republic of Korea (South Korea) has not ratified any international conventions on Arrest Convention. Therefore, none of any arrest conventions or maritime liens and mortgage conventions is part of Korean law. Instead, a claimant is entitled to arrest a vessel in accordance with the Civil Enforcement Act of Korea.

South Korea is a country with codified law. Cause of actions for claimant which leads to the arrest of the vessel are regulated Korean Civil Code and Commercial Code. The cargo claimant has a claim if the carrier inflicts damages on the cargo due to its negligence against the duty stipulated in Article 795 of the Korean Commercial Code. The substantive law for maritime lien is stated in Article 777 of the Korean Commercial Code. In the meantime, the procedure for executing the claims is regulated by the Korean Civil Procedural Act and Civil Enforcement Act.

Under the Korean Civil Execution Act,<sup>1</sup> only the property owned by the debtor is subject to arrest and judicial sale. Therefore, if the cargo was carried on board a vessel owned by the shipowner but operated by the bareboat charterer, the cargo interest is not allowed to arrest the vessel. Of course, the cargo interest is allowed to arrest other vessels owned by the bareboat charterer.

There are four ways to arrest the vessel in Korea such as prejudgment attachment (provisional attachment), maritime lien, arrest through mortgage and arrest after winning judgment.

### 1. *Prejudgment Attachment*

First, the claimant is allowed to arrest the vessel of the debtor before it starts the law suit for the merits which is called as the prejudgment

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\* May 5, 2016, New York(CMI Conference).

\*\* President of South Korea Maritime Law Association.

<sup>1</sup> Korean Civil Execution Act regulates for the claimant to execute its claim against the debtor. It became independent from the Civil Procedural Act in 2002 and now exists as a separate and distinct Act.

attachment(Civil Execution Act Article 272). The attachment is recorded on the ship record book, which prevents the debtor from changing the ownership of the vessel and a result, the owner of the vessel is not able to sell the vessel to others, that is, maintaining status quo. The prejudgment attachment is available for every kind of claims, not only for maritime claim.<sup>2</sup>

In order for the claimant to get the writ for arrest the vessel under the name of the prejudgment of the attachment, it should verify the urgent need to arrest the vessel and the presence of the claim on which it relies for the reason of the attachment. The claimant is required to deposit 1/10 of the claim amount to the court for the benefit of the shipowner as the alleged debtor as a security in case of the wrongful arrest.

Korea is not a party to Arrest Conventions.<sup>3</sup> According to the Korean law, claimants from every kind of claims are allowed to arrest the vessel owned by the debtor, which is different from the Arrest Convention and China.<sup>4</sup> Therefore, the bank who lends money to the shipowner (A) is entitled to exercise the prejudgment attachment over any vessel owned by A even though the claim is not related to the maritime claim. However, it is not allowed to invoke the prejudgment attachment against the A's borrowed vessel which is owned by B.

In order for the claimant to sell the vessel, a winning judgment is further required in the subsequent lawsuit for the merit. In order for the shipowner to release the arrested vessel, it should deposit "cash" equivalent to claim amount to the court(CEA, Article 299(1)).

## *2. Arrest of the vessel the claimant as a security holder*

Second, the claimant is also entitled to arrest the vessel as the mortgagee. Like prejudgment attachment, the claimant is not required to have a winning judgment. It has power to arrest the vessel and apply for judicial sale through the application to the court, verifying that it is the mortgagee and the mortgagor has not paid the money by the due date. It is also applicable for all kinds of mortgage situation, not only mortgage on the vessel.

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<sup>2</sup> The claimant should prove that there is an urgent need to arrest the vessel of the debtor. In addition, the presence of the claim against the carrier should be proved. However, it is not strictly required to verify it because it is not an actual law suit for the merit in Korea.

<sup>3</sup> The International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952 (hereafter as "the 1952 Arrest Convention") was drafted for the consideration of legal conformity in international shipping law, especially relating to the arrest of ships. Korea is not a party to the 1952 Arrest Convention. In addition, Korea does not reflect the main system of the arrest of vessel in the 1952 Arrest Convention into the Korean laws.

<sup>4</sup> 1952 and 1999 Arrest Convention Article 3 and Article 1; Article 21 and 22 of Special Maritime Procedure law of the People's Republic of China.

The court gives the decision for the arrestor to sell the vessel, and an order for the vessel to be stayed at the designated port, upon receiving the application for the arrest and the arrestor provides requirement such as the existence of the security right.

3. *Arrest by the claimant with a winning judgment*

Third, the claimant is also allowed to arrest and sell the vessel after it obtains a winning judgment. The cargo claimant may bring about a law suit against the carrier before a certain Korean court. Only after it obtains a winning judgment from the court, it is entitled to apply for the document of executing the winning judgment. The claimant with the document goes to the bailiff in order to arrest the vessel of the debtor and to sell it in the auction sale for satisfying its claim. The claimant with the winning judgment has power to sell the debtor's property, as opposed to the prejudgment attachment.

The claimant is not required to provide any bond for the benefit of the debtor because it has a winning judgment. In order for the shipowner to release its vessel under the judicial sale process, it should apply for cancellation or temporary stoppage of the process with another law suit to argue that the process is wrong, depositing cash of the equivalent to the claim amount.

4. *Arrest of the vessel by the maritime lien holder*

Fourth, the maritime lien holder is allowed to arrest the vessel and apply for the judicial sale. The maritime lien is allowed without lawsuit in merit, which is the same as the prejudgment attachment and mortgage situation. It does not need to record the presence of the maritime lien on the ship record book, which is different from other three cases. The maritime lien holder is allowed to arrest only the relevant vessel, which is the same as the mortgage situation and different from the prejudgment attachment and winning judgment case. The maritime lien holder is still entitled to exercise its right against the vessel even though the vessel's ownership title has changed to the other person from the debtor.

Just like the Arrest by the claimant with a winning judgment, the claimant is not required to provide any bond for the benefit of the debtor because it is the security holder. In order for it to release its vessel under the judicial sale process, the shipowner should apply for cancellation or temporary stoppage of the process with another law suit to argue that the process is wrong, depositing cash of the equivalent to the claim amount.

Because the governing law is the law of the flag state of the vessel subject to maritime lien under the Korean International Private Act, and the law of the flag states is not well known, in case of the flag of convenience such as Panama, Marshall Islands, there is high possibility that the vessel is wrongfully arrested by the Korean claimant.

## II. *Questions relating to wrongful arrest*

Whether the claimant (arrestor) who invokes the maritime lien wrongfully is subject to claim from the owner of the relevant vessel or not is at issue. Korean legal system is based on the fault liability system, that is, only the person who acts negligently is liable for the damages to the aggrieved party.<sup>5</sup> The general principle of the law is also applicable for the wrongful arrest case under the Korean law. Therefore, the claimant who applied for the arrest through the maritime lien negligently is subject to claim from the owner of the arrested vessel(The KSC case 2002.10.11. *Docket No. 2002da35461*)

In a case that the arrestor applied for the arresting the vessel, believing that he had right claim, relying on the Panamanian lawyer's advice, the Korean court did not impose the liability upon the arrestor (Seoul Central District Court case 2015.5.8. *Docket No. 2014gahab36288*).

### 1. *Security*

A claimant (arrestor) in South Korea is required to provide security amounting about 10 % of the claim amount for arresting a vessel based on a prejudgment attachment. This security may be provided in the form of performance guarantee insurance policy.

On the other hand, when the vessel is released by the shipowner, full amount of the cash should be deposited to the court. The guarantee of reliable bank is not allowed as the substitute of the cash. Therefore, it can be said that there is imbalance in terms of protection between the claimant and the shipowner.

### 2. *Extent of subjective requirement*

If the claim for which a vessel has been arrested has subsequently been rejected by the court, hearing the case on its merits, the arrestor would be held liable in damages in case that there was his awareness that his claim has neither foundation nor his negligence in bringing such an arrest application. Bad faith or gross negligence or, otherwise, malicious bringing of such a claim is good enough to satisfy the subjective requirement for wrongful arrest claim.

The claimant who is defeated at the subsequent law suit for the merit after arresting the vessel, its negligence is presumed as being existed according to Korean court cases. Therefore, the shipowner is in a better position to succeed in verifying tort done by the claimant's wrongful arrest claim if it win the lawsuit for the merit.

### 3. *When the first court decision repealed by the appeal court*

If there is no court judgment deciding on the merits of the claim, the

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<sup>5</sup> Of course, the person who acted knowingly is also liable.

arrestor would be liable only if the arrestor's awareness or negligence is proved by the other party even though the arrest order was repealed by an appeal court.

4. *Wrongful arrest*

According to the Korean law, only the property of the debtor is subject to the arrest. Therefore, if the debtor is the time charterer, the vessel operated by the time charterer is not subject to the arrest because the vessel is not owned by the time charterer as the debtor.

In case that the claim was not against the owner of the ship and thus could not be enforced against that ship under the law of the state where the vessel was arrested, the arrestor would be liable in damages. No proof of the shipowner on the arrestor is required because the arrestor's negligence is presumed. The arrestor will be liable for the damages unless it does verify that there was no negligence on his part in arresting the vessel.

5. *In case of grossly exaggerated claim amounts*

(a) In case that the amount of the arrest claim was grossly exaggerated, the arrestor may be held liable for

- (i) the extra cost of the security required,
  - (ii) losses incurred by the owner of the ship by reason of the delay caused by the greater time required to procure the security, or
  - (iii) losses incurred as a result of the owner being unable to provide the excessive security
- , depending on the circumstances of the case. The loss of earning incurred during the days due to the wrongful arrest is a good example which the Korean court admits as the loss collectable. In a hull insurance case, insurance premium was decided as not the loss collectable.

(b) For liability under (a), proof of negligence on part of the arrestor would be sufficient. The malicious or gross negligence is not necessarily required to be proved.

6. *Arrest of the arrestor's vessel in case that the arrestor was wrong*

Even if the person allegedly liable for the arrest claim is largely solvent and it is possible to enforce judgments or arbitration awards against him because he owns many ships, which call regularly at ports where enforcement can take place, the shipowner's arrestor against the person's vessel is not regarded as wrongful.

7. *Other cases triggering wrongful arrest*

In addition to the grossly exaggerated amount case, if an arrestor misrepresented something at a court (i.e. the location of a ship as a requisite



of the jurisdiction of the presiding court) to obtain the arrest order from the court, the arrestor can be held liable in damages for the arrest of a ship.

8. *Penalty or sanction other than the damages claim*

Neither any penalty nor sanction other than damages claims is levied upon the arrestor under the Korean law.

9. *In case that foreign factor is involved*

In case that a foreign factor is involved, the Korean Court would apply the substantive law applicable pursuant to the International Private law of the Republic of Korea (KIPL). The Korean Supreme Court regards the wrongful arrest claims as the tort claim. Therefore, the law of the place where the tort was committed is designated as the governing law for the wrongful arrest claims according to KIPL Article 32(1). As a result, when the vessel (for example Panamanian flag) was arrested based on maritime lien in Korea and the court decided that the arrest was wrongful and, subsequently, the shipowner brought about the claim for wrongful arrest, whether the maritime lien is triggered or not is governed by the Panamanian law according to Article 60, whereas the wrongful claims is governed by the Korean law according to Article 32(1) of the KIPL.

## BRIEF HIGHLIGHTS OF U.S. LAW RE: WRONGFUL ARREST

M. HAMILTON WHITMAN, JR.\*

Arrest and attachment of vessels are largely matters of Federal Court procedure, although State Court procedures can also be used in Federal Court for attachment.

Federal Court procedure is governed by the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions.

1. Rule B governs attachment of property to provide *quasi in rem* jurisdiction over a maritime claim when the defendant's property is present but the defendant "cannot be found" within the judicial district.
2. Rule C governs arrest of vessels and other property, *in rem*, to enforce a maritime lien.
3. The rules require a "verified complaint" and provide for the Court to issue the process of maritime attachment and garnishment, or the warrant of arrest, after review by a judge.
4. Post-arrest or attachment, the rules provide for a prompt hearing at which the plaintiff has the burden to show why the arrest or attachment should not be vacated. Local rules often provide 3 days.
5. The owner or other party claiming an interest in the vessel or other property may post security for release of the *res*.
6. Counter-security may be obtained under the rules for a counterclaim "that arises from the transaction or occurrence that is the subject of the original action". Rule E(7).

The Courts have recognized standards for "wrongful" arrest or attachment.

1. "The arrest of a vessel in admiralty is an inconvenience to which the owner must submit as one caused by the exercise of a legal right on the part of the plaintiff".

*Stevens v. F/V Bonnie Doon*, 655 F.2d 206 (9<sup>th</sup> Cir. 1981)

2. "The gravamen for the right to recover damages for wrongful seizure or detention of vessels is the bad faith, malice or gross negligence of the offending party".

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\* Baker Donelson.

*Frontera Fruit Co. v. Dowling*, 91 F.2d 293 (5<sup>th</sup> Cir. 1937)

Examples of bad faith:

- a. knowledge of no-lien clause
  - b. violation of undertaking to not re-arrest
3. “The advice of competent counsel, honestly sought and acted upon in good faith, is alone a complete defense”.

*Frontera Fruit Co. v. Dowling*, 91 F.2d 293 (5<sup>th</sup> Cir. 1937)

4. “Whether or not an action for wrongful seizure ... may be asserted as a counterclaim in admiralty practice, counter-security under Rule E(7) may not be required for such a claim”.

*Incas & Monterey Printing & Packaging, Ltd. v. M/V Sang Jin*  
747 F.2d 958 (5<sup>th</sup> Cir. 1984)

## **TOWARDS UNIFORM RULES ON WRONGFUL ARREST OR STILL WITH THE LAW OF THE JURISDICTION WHERE THE ARREST IS MADE?**

**GIORGIO BERLINGIERI**

As mentioned in “*Liability for wrongful arrest, a report on this study and on the activities of the IWG*” (Yearbook 2015, pp. 296-299), there has been quite a reaction to the Questionnaire which was circulated just before the Istanbul Colloquium.

In fact it was answered by 36 NMLAs, which is believed to constitute a record in the number of replies to a Questionnaire. The responses were summarized in Yearbook 2015 (pp. 300-352) and Rapporteur Aleka Sheppard assisted quite much in having the work of this IWG progressed.

Session 14 at New York was co-chaired with Gina M. Venezia of the USMLA Practice and Procedure Committee and, in addition to Aleka Sheppard, saw as other distinguished Panellists Sir Bernard Eder, a Member of the IWG, In Hyeon Kim, the President of the South Korean MLA and M. Hamilton Whitman Jr. of the USMLA.

The IWG, which is made also by Karl-Johan Gombrii, Ann Fenech and Christopher O. Davis, noted that there was a great interest in the subject during the New York Conference. It should now be considered whether the “*status quo*” in the 1952 Arrest Convention, slightly improved in the 1999 Arrest Convention, which refers to the law of the place of arrest to determine liability if any for wrongful arrest, can be changed.

Although there seems to be no much desire in the international shipping community to take the matter forward, the possibility of achieving uniformity may be considered, for instance by way of a Protocol to the 1999 Arrest Convention. However, although in force as from 14 September 2011, this Convention has a limited number (11) of ratifications and accessions, with only a few countries party to it having a certain ship’s tonnage and with no new accessions after that of Albania in 2011.

Guidelines or a model law could therefore do better.

What it may encourage a possible prosecution of the works of the IWG, with some provisional drafting of uniform rules, is that in many jurisdictions the arrestor is liable for damages caused to the defendant if he acted with gross negligence.

This appears from the answers to the Questionnaire and is confirmed by two recent decisions from civil and common law Courts: Court of Gorizia 11 May 2016, *ING Bank N.V. v. Hyundai Corp. and others - "Saga Crest"*; High Court of Singapore 4 December 2015, *Big Port Service c. Owners of "Xin Chang Shu"*.

1) With judgment of 28 April 2016 the Court of First Instance of Gorizia in the *"Saga Crest"* held that claimants ING Bank, as assignees to OW Bunker Middle East, were liable for the wrongful arrest of the ship and should pay damages to time charterers.

Time charterers had ordered bunkers to Norwegian Oil Trading, which in turn instructed Hyundai Corp. Singapore Pte for the supply and sale of the bunkers.

Hyundai was paid by time charterers but did not pay OW Bunker.

As a result ING Bank arrested the ship at Monfalcone on the basis that Hyundai were the charterers of the *"Saga Welco"*.

In dismissing the arrest the Court stated that the claim was self evidently groundless and that reference to art. 3.4 of the 1952 Arrest Convention could not be made.

The Court further held that claimants acted with gross negligence in proceeding with the arrest as the assertion that Hyundai were the charterers was not true and claimants could have ascertained it.

2) With judgment of 4 December 2015 the High Court of Singapore in the *"Xin Chang Shu"* similarly held that claimants were liable for the wrongful arrest of the ship and should pay damages to owners.

The owners had ordered bunkers to OW Bunker China Limited and, after payment for the supply, the ship was arrested by Big Port Service which claimed to have supplied such bunkers to the ship pursuant to a request of OW Bunker Singapore, alleged to be agents of the owners.

It appeared that the arrestor was aware that that company was not the agent of the owners, but a company who had supplied the bunkers purchased from claimants to the actual agents and had been paid for the supply. The Court relied on *The Vasily Golovnin* in which the Court of Appeal affirmed the longstanding test set out in *The Evangelismos*.

\* \* \*

It should be on the IWG to find a possible way ahead, seeking cooperation from the NMLAs. This could be achieved by constituting an International Sub Committee, to give voice to all NMLAs and to hopefully find uniformity, dictating general principles which may be valid in any law system.

I would very much like that this project is taken forward.



## OFFSHORE ACTIVITIES

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## **OFFSHORE ACTIVITIES - UPDATE ON CURRENT SITUATION**

**PATRICK GRIGGS**

This is billed as an update but for many in today's audience this may be a new topic. So, at the risk of boring those who attended the CMI Seminar in Istanbul last year it will be both a recap and an update.

Our first speaker in Istanbul was Dr. Iur. Damos Dumoli Agusman (Deputy Director General of Treaties and Legal Affairs, Ministry of Foreign Affairs of the Republic of Indonesia). He gave us a full and illustrated account of the blow-out which occurred in August 2009 at the Montara oilfield situated in the Australian EEZ some 135 miles northwest of the nearest coastline of the Australian mainland and a similar distance from the nearest coast of Indonesia. Oil from the blow-out came ashore in Australia and in Indonesia.

Nobody in this audience needs reminding that on April 20th 2010, the Deepwater Horizon drilling platform suffered a blow-out in the Gulf of Mexico, killing 11 members of the crew and injuring others. This led to a protracted and sustained leak of an estimated 4 million barrels of oil into the waters of the Gulf.

Dr. Agusman suggested that these two incidents highlighted the fact that there is no international convention in force covering the issues of liability and compensation for such spills<sup>1</sup>. There is a view (outside as well as inside the USA) that many US claimants have been over generously compensated following the Deepwater Horizon incident. It is the sad fact that Indonesian claimants have received nothing following the Montara blow-out.

In April 2011 the Government of Indonesia submitted a paper to the 97th Session of the IMO Legal Committee (LEG 9714/1). In that document, on the back of the Montara incident, it proposed that the Committee should include an item in its future work programme addressing issues of liability and compensation arising from transboundary pollution. I represented CMI at that session of the Legal Committee and can report that there was considerable

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<sup>1</sup> The 1977 Convention on Civil Liability for Oil pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources never came into force and the CMI 1977 draft International Convention on Offshore Mobile Craft also failed to garner any support.



opposition to this proposal. In the first place several delegations stated that pollution from offshore rigs was outside the terms of reference of the Legal Committee because rigs are not “ships” – this despite the fact that the Committee had, a few years earlier, quite happily drafted the SUA Convention and Protocols which address problems of unlawful acts against the safety of fixed platforms. Apart from this procedural hurdle the Legal Committee concluded that there was no “compelling need” to develop an international convention on this subject. (“Compelling need” is the threshold for new projects in the Legal Committee.) The Legal Committee concluded that the problem could best be resolved by means of regional and bilateral agreements between states. To this end the Indonesian Government was encouraged to develop a Guidance document to assist states in negotiating such agreements. Accordingly an Intersessional Correspondence Group (ICG) was set up to develop a Guidance document. It is generally accepted that a Guidance document should only be regarded as an interim measure – development of an international convention should remain the ultimate goal.

In April 2015, at the 102nd Session of the Legal Committee, the Observer delegation of the Iberoamerican Institute of Maritime Law submitted document (LEG 102/11) which contained an historical review of the various attempts to regulate offshore activities. The paper stressed the continuing need for an international convention to deal with the risks and consequences of offshore drilling. The Legal Committee merely repeated its previously stated reasons for not wishing to deal with this topic though it remains in the Agenda, at each meeting, under Any Other Business whilst efforts are directed to drafting the Guidance document.

In my capacity as Chairman of the CMI International Working Group on Offshore Activities, I reminded delegates to the Istanbul Seminar that at an early stage in the development of the Guidance document, the CMI had offered to assist the project by collecting information about existing regional and bilateral agreements on transboundary oil pollution from offshore activities. A Questionnaire had been prepared by a CMI International Working Group and had been sent out to national maritime law associations.

Responses were received from 19 NMLAs and a summary of those responses was prepared and made available to the IMO Secretariat and to the ICG. The summary is to be found on the CMI website.

This research revealed that several regional or bilateral agreements were already in existence:

- 1) 1992 Convention for the protection of the marine environment of the North-East Atlantic (the OSPAR Convention) to which Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, UK and the European Union are Contracting Parties. This Convention does *not* deal with issues of liability and compensation.

2) 1994 Protocol for the protection of the Mediterranean Sea against pollution resulting from exploration and exploitation of the continental shelf and the seabed and its subsoil (The Barcelona Convention). This Protocol came into force in 2011 but has not been widely ratified. The Protocol *does* deal with the issues of liability and compensation.

3) 1981 Convention (and 1985 Protocol) for co-operation in the protection and development of the marine and coastal environment of the West and Central African Region (The Abijan Convention) to which Angola, Benin, Cameroon, Cape Verde, Congo, Cote d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mauritania, Namibia, Nigeria, Sao Tome and Principe, Senegal, Sierra Leone and Togo are parties. (This Convention appears to be mostly to do with technical co-operation but does encourage states parties to enact national legislation to deal with issues of liability and compensation.)

4) 1975 Offshore Pollution Liability Agreement (OPOL), which is not an international convention but a private agreement between 16 operators in the offshore sector. This Agreement was initially an interim measure to provide a strict liability regime whilst awaiting the entry into force of a regional Convention on Civil Liability for Oil Pollution Damage resulting from Exploration for and Exploitation of Seabed Mineral Resources (CLEE), a regional convention for the Baltic, North Sea and North Atlantic areas. The Convention was never ratified by any of the nine states that participated in the Diplomatic Conference which adopted the Convention and it has not come into force. However, OPOL continues to operate and imposes strict liability on operators of offshore facilities and guarantees payment of compensation up to a limit currently set at US \$ 250 million per incident. The parties to OPOL are 16 operators of offshore facilities within the jurisdiction of any of the "Designated States" to the Agreement which are UK, Denmark, Germany, France, Republic of Ireland, Netherlands, Norway, Isles of Man, Faroe Islands and Greenland. Membership of OPOL is a condition precedent of obtaining a licence to drill.

At the Istanbul Seminar Prof. Baris Soyer, Director of the Institute of Shipping Law at the School of Law, Swansea University explained how the OPOL Agreement works and explored whether it might be a suitable model for other regional agreements on the subject of pollution from offshore activities.

For those who have not heard of OPOL it covers almost any offshore activity and any type of equipment used for exploration, exploitation or storage. It covers the escape of crude oil but not lube oils or drilling mud. As I have mentioned earlier, the limit of liability for claims is \$250m and the agreement covers the cost of preventive measures as well as compensation for "direct loss or damage". It is doubtful whether this would include "pure economic loss". Damage to the environment is not covered. The group of operators act as guarantors of payment.

If a claimant chooses to present a claim under the agreement any dispute would be subject to the arbitration provisions of the agreement. Claims can also be pursued in tort outwith the OPOL agreement, subject to proof of negligence. Such claims might, depending on the circumstances, be subject to limitation under the relevant Limitation of Liability Convention but not under the Civil Liability Convention which relates to “ships” only.

On the question of whether OPOL might be developed into an international agreement Prof. Soyer expressed his doubts though he did suggest that it gave an indication of what “the industry might be comfortable with.”

On April 13th 2015, on the eve of the 102nd Session of the Legal Committee, meeting the ICG organised an open meeting under the joint chairmanship of Indonesia and Denmark. At the meeting I made a presentation of the responses to the CMI Questionnaire. At the same meeting the ICG launched what it described as the “zero” draft of the Guidance document. This draft has been the subject of further fine tuning and will be presented to the 103rd Session of the Legal Committee which starts on June 6th. The next speaker today will be William Sharpe who has been involved with the efforts of the ICG to fine tune the Guidance document. So, I will say no more about that.

At the April 2015 ICG meeting reference was made to the comprehensive legislation which the Norwegian Government has developed on this topic and it was suggested that any state which was without a developed law on the subject of offshore activities might wish to use the Norwegian Petroleum Act as a template for legislation. Delegates to the Istanbul Seminar were given a detailed review of the Norwegian legislation on this subject with particular reference to the process of issuing licences for offshore operations. The speakers were Prof Erik Rosaeg (from the Scandinavian Institute of Maritime Law) and Mette Gravdahl Agerup (Assistant Director at the Norwegian Ministry of Oil & Energy).

Finally, delegates to the Istanbul Seminar were offered a view from the insurance industry of the availability of insurance capacity to cover the risks involved in spills from offshore activities. Fabien Lerede (Claims Director, Standard P. & I. Offshore Syndicate) confirmed that P. & I. coverage was widely available for risks associated with offshore drilling. However, such cover was limited to claims for personal injuries, wreck removal, collision and fines (up to \$50m). As far as pollution is concerned this insurance would *only* cover damage caused by oil contained in the riser – not from oil escaping from below the surface following a blow-out.

As to the availability of cover in the energy insurance market he indicated that cover up to \$2 billion could be obtained. Looking forward to a possible future liability regime he pointed out that, for purposes of insurance, there would have to be a limit of liability and that fixing the figure would not be easy (limitation based on tonnage would not work in the context of drilling rigs).

He also pointed out that with the constant innovation to drilling techniques, assessing risk and therefore premium would be increasingly difficult.

New blow-out inhibitors are well advanced which should limit the extent of pollution from future blow-outs but he warned that with the slump in oil prices there would be less money around to fund the installation of these devices and more temptation to “cut corners” generally.

The Seminar concluded with a question and answer session. Most of the questions related to the OPOL agreement which appeared to be relatively unknown to delegates. Their interest may suggest that agreements of this type might, in time, feature on a regional basis.

This review of the current situation would not be complete without a reference to the work of European Commission on the subject. (For an Englishman sitting on the verge of a possible Brexit, you might wonder why I bother to mention this. However, there is a good chance that we’ll wake up on June 24th and find that we are still members of the EU!)

#### *European Union.*

The European Parliament and Council of the European Union have published a series of Directives covering the safety of offshore oil and gas operations. The most recent is Directive 2013/30/EU. This deals, for the main part, with issues of safe operation and the prevention of spills. However, Article 7 provides that member states “shall ensure that the licensee is financially liable for the prevention and remediation of environmental damage caused by offshore oil and gas operations”. Chapter VII is entitled Emergency Preparedness and Response and requires states to develop internal and external emergency response plans. Chapter VIII deals specifically with Transboundary Effects and requires co-operation between states in the event of a spill.

By Article 39 the Commission is required, by July 19th 2015, to submit to the European Parliament and to the Council a “report on the availability of financial security instruments, and on the handling of compensation claims...accompanied by proposals”. The Commission is also required to submit a report on the “effectiveness of the liability regimes in the Union in respect of the damage caused by offshore oil and gas operations.” This report is also to assess the “appropriateness of broadening liability provisions.”

The Commission’s report to the European Parliament will take into account the conclusions of two reports funded by the Commission.

The first study was published by the University of Maastricht in October 2013 and is entitled “*Civil Liability and Financial security for Offshore Oil and Gas Activities*”. At the conclusion of this 400 page study it is recommended that the EU should (through an appropriate UN organisation or other world body) promote the creation of an international treaty to cover pollution from offshore activities with particular reference to transboundary pollution.

The second study was prepared by Bio by Deloitte and was published in August 2014. It is entitled “*Civil Liability, Financial Security and Compensation Claims for Offshore Oil and Gas Activities in the European Economic Area*”. This study contains a detailed analysis of the law in EU member states regarding the rights of pollution victims to recover damages and the extent of those damages. It concludes that it will be impossible to establish a liability regime until there is greater uniformity in the law of member states on the issue of recoverability of damages for pollution. The study highlights the lack of conformity on the right to recover damages for pure economic loss.

Going back to the Maastricht University study and its recommendation that an international treaty should be promoted it is suggested that the main features of such a treaty should be:

- (i) strict liability,
- (ii) reduced liability to pay compensation in the event of contributory negligence,
- (iii) no channelling of liability,
- (iv) joint and several liability of the parties involved,
- (v) “economic channelling” – the financial security of the licensee or operator to cover sub-contractors,
- (vi) promotion within the E.U. of regional pooling of risks by contractors (OPOL type agreements for other areas of sea).

Finally, I should mention that Directive 2013/30/EU requires all states to implement the safety and operational provisions of the Directive by July 19th 2015. It is assumed that, in due course, there will be a further Directive dealing with issues of liability, compensation and financial security.

**BRIEF COMMENT ON THE IIDM  
POSITION PAPER ON OFFSHORE ACTIVITIES  
PRESENTED IN THE LEGAL COMMITTEE  
OF IMO LEG 102 APRIL 14, 2015**

**JORGE M. RADOVICH**

*1. The Iberoamerican Institute of Maritime Law*

The Iberoamerican Institute of Maritime Law (IIDM, for its acronym in Spanish) was founded in Huelva, Spain, in October, 1987, as an international non-governmental, non-profit organization of open-ended duration. Since then, it has been the first and only Maritime Law organization existing among Luso-Hispanic speaking countries.

Ports and government authorities, shipping and dredging companies, businessmen, lawyers, adepts, adjusters and individuals specialized in maritime topics of over twenty countries are members of the IIDM, representing most of the Latin American Countries plus Spain and Portugal.

Each country has a Vice-presidency elected by its Members and a President is elected by the Assembly every two years. The goal is the rotation of the Presidency among the Latin American Countries, Spain and Portugal. The institution has a Permanent Administrative Secretary located in Buenos Aires, Argentina.

In addition to the Iberoamerican countries, the United States, Canada, Germany, France, Italy and the United Kingdom are currently members of the Organization. They have voice but no right to vote in the Assembly, and cannot apply for the Presidency.

Since its inception the IIDM has been characterized by advocating and developing a Uniform Maritime Law for the region.

In early 1995 the IIDM was admitted as a non-governmental organization consulting agency in the International Maritime Organization (IMO). By March of 1996 it was designated as an observer of the Comité Maritime International (CMI). In June of that same year, the IIDM was invited to join the Andean Nations Commission as an advisor on Maritime Transportation. Also in 1996 it acquired the status of non-governmental consulting institution of the United Nations Commission on International Trade Law (UNCITRAL). In June 2007 the IIDM signed an Agreement for Technical Cooperation with the Organization of the American States through the Office of the Secretary of the Interamerican Ports Commission.

With the purpose to achieve the diffusion and development of the Maritime Law and aware of the role that the Institution must perform in the process of analysis, unification and modernization of the international maritime regulation the IIDM has, among others, the following objectives:

- (i) to encourage the development of the Maritime Law in the Iberoamerican region, coordinating its work with other regional and international organisations, whether private, governmental or dependent of International Agencies;
- (ii) to foster the study, investigation and teaching of Maritime Law and its history, as well as other aspects related to the Law of the Sea;
- (iii) to promote the development and the use of commercial arbitration in maritime affairs, being able to act through its organs as an administrative institution of arbitrations; and
- (iv) to act as a consulting organism of International Organizations and of State governments regarding Maritime Law.

## *2. The Position paper filed by the IIDM at the IMO Legal Committee in 2015*

The IIDM presented a position paper to the Legal Committee of IMO in 2015 (LEG 102-11). It states that the Committee must undertake the drafting of an international convention regulating the matter of transboundary pollution originated in Offshore Activities.

The paper analyzes the existing bilateral and regional treaties, and demonstrates that they do not suffice to appropriately regulate the transboundary pollution originated in Offshore Activities.

Among the regional agreements pertinent to the extractive industry the paper mentions the so called OPOL (Offshore Pollution Liability Agreement), which establishes strict and limited liability to USD 250 million per event guaranteed by all the operators of the area. It applies to the North of Europe, excluding the Baltic. This agreement is not an international convention, rather it is an agreement among industry operators.

The IIDM's paper argues that the Offshore industry affects marine navigation and that transboundary pollution cannot be ignored.

IMO experience with the CLC and Fund Conventions is very valuable and that is why the IMO should involve itself in this area.

The position paper is reproduced in the 2015 CMI Yearbook, pages 184 to 192. Therefore, we will only highlight the most relevant aspects in this short article.

The current attitude contrary to the elaboration of an International Convention by some States and the IMO is faced by two important and recent disasters at sea. The first one is well known, but the second one has passed almost unnoticed despite its legal importance due to the ensuing transboundary pollution. The first, renowned case is the one concerning the

DEEPWATER HORIZON Platform, which in April 2010 exploded and took fire in the Gulf of Mexico, in front of the coasts of the Louisiana State causing eleven deaths and a colossal spill that lasted 87 days until it could be obturated. The Platform operated in waters of approximately 1,500 meters deep and drilled at 2,700 meters, 66 kilometers from Louisiana coast.

The Platform sank on April 22<sup>nd</sup>, 2010. It is estimated that the oil spill comprised between 700 and 780 millions of liters, and seriously affected the littoral of four North America States- Louisiana, Mississippi, Florida and Alabama, and also the Mexican coast.

As it was exploited by British Petroleum, this company had economic solvency to respond to claims, although it had not insured the Platform<sup>1</sup>. Self-insurance is an extended reality in the industry. British Petroleum renounced to invoke the reduced liability cap applicable according to the United States Oil Pollution Act (OPA)<sup>2</sup>.

The less known disaster is the MONTARA one. In 2009 a Platform operated by a Thailand Petroleum company was drilling a well when an explosion took place and large volumes of oil were spilled. It was operating in the Australian Economic Exclusive Zone, but it did not affect this State but, rather, affected the Indonesian territory. MONTARA was located in waters of approximately 77 meters deep and drilled at 2.500 meters deep<sup>3</sup>. It leaked during 74 days affecting Indonesia's coast and, not being the operator of first level as in the Gulf of Mexico case, the claims were not satisfactorily paid to the victims with the appropriate diligence<sup>4</sup>.

This case evidenced the lack of a Convention establishing a Fund to face this type of transboundary pollution claims, or of sufficient compulsory insurance that assures the quick and correct compensation to those prejudiced by a leakage caused by the extractive industry.

In 2012 Indonesia stated the issue before the IMO Security Committee. It was told to direct it to the Legal Committee due to incumbency questions. When the topic was treated by the Legal Committee, it faced opposing positions. Indonesia maintains that an international instrument regulating the issue shall be enacted.

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<sup>1</sup> Transocean Ltd., owner of the drilling rig, reportedly had a total of USD 945 million of insurance coverage on the drilling rig itself (\$560 million of insured property value plus USD 385 million in additional coverage to pay for various mitigation and recovery efforts). We understand that Transocean also had liability insurance coverage of USD 950 million. These amounts obviously did not suffice to cover the damages caused by this spill.

<sup>2</sup> USD 75 million plus all the removal costs pursuant Section 1004, B (3).

<sup>3</sup> An International Convention on Off-Shore Hydrocarbons Leaks?, by Federal Australian Judge Steven Rares. Work published in Beijing Conference Proceedings, p. 258.

<sup>4</sup> As Justice Rares informed to the IWG during its meeting during the Dublin Symposium.



Indonesia even organized a Conference in Bali in 2011 searching for an advance towards an International Convention guaranteeing compensation for transboundary pollution<sup>5</sup>, and later organized other Conferences with the same goal.

### 3. *The conclusions of the 100th Meeting of the IMO Legal Committee*

In the centennial session of the IMO Legal Committee, held in London from April 15<sup>th</sup> to 19<sup>th</sup> 2013, the topic was analyzed –among others- and the following conclusions were reached<sup>6</sup>:

- There is not an imperative necessity to prepare an international treaty on offshore activity;
- The objective shall be to assist States to reach bilateral or regional agreements by creating workshops or consultive groups;
- There is no need for IMO to get directly involved, since it may delay bilateral or regional agreements;
- The States that have ratified bilateral or regional agreements should offer assistance to those wanting to reach the same objectives;
- Principles established in document Leg 100/13/2 should be considered, which reflects regulations of CLC and Fund 1992 and Bunkers Conventions<sup>7</sup>;
- Regarding environmental issues, Sections 192, 194 and 197 UNCLOS<sup>8</sup> shall be taken into account.

Indonesia insisted with its position during the following session of the IMO Legal Committee, but the Committee maintained the previous position commented above. A paper (LEG 101/1) was submitted by Indonesia and confirmed its ongoing determination to develop guidance or model agreements on transboundary pollution.

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<sup>5</sup> “Conference on Liability and Compensation Regime for Transboundary Oil Damage resulting from Offshore hydrocarbon exploration and extraction”. A complete report in English might be seen in CMI Newsletters N° 3, 2011.

<sup>6</sup> In conformity to Patrick Griggs report to CMI Executive Council, considered on its meeting of May, 2013.

<sup>7</sup> In respect to the last one, see Griggs, Patrick, “International Convention on Civil Liability for Bunkers Oil Pollution Damages; 2001”, available at the web site of the British Association of Maritime Law, [www.bmla.org.uk](http://www.bmla.org.uk). This Convention entered into force in November, 2008 and establishes objective, limited, canalized and mandatory insurable liability of the owner of the vessel for the damages caused by oil spill, including the cost of preventive measures or confinement and minimizing of the spill. It has obtained an important number of ratifications; however, neither Argentina nor Uruguay have ratified it yet.

<sup>8</sup> United Nations Convention on the Law of the Sea Montego Bay 1982 (known by its acronym CONVEMAR in Spanish and UNCLOS in English).

#### 4. *Reasons for the position of the IMO Legal Committee*

In the Symposium organized by the Irish Association of Maritime Law held in Dublin in September 2013, Dr. Rosalie Balkin, the then IMO Director of Legal Affairs and External Relations Division, with continuous participation in the Legal Committee, explained the position adopted by the organization.

She explained that the regulation of offshore activity is not part of IMO aims, which arises from its constitutive Convention. Actually, the instrument begins by establishing the objective of the organization in the following terms:

*“Article 1*

*The objectives of the Organization are:*

*a) to establish a system of collaboration among Governments regarding the regulation and governmental practices of technical issues of every aspect concerning commercial international navigation, and promote the general adoption of rules to reach the highest possible levels referring maritime security and efficiency in navigation;...”*

Although it is true that the instrument focuses on commercial international navigation and on prevention and compensation of pollution from vessels, and that there is no mention whatsoever to exploitation of offshore hydrocarbons, it shall be noted that it dates from 1948, a time when that activity was at an early stage of development. Nowadays a highly developed ecological and conservationist consciousness exist, that were not present when the instrument was adopted.

Also, this interpretation, in our opinion, contradicts IMO's central objectives, stated in its web page and its own logo – improving maritime security and promoting clean seas- especially in relation to pollution by hydrocarbons. We believe that permitting the proliferation of offshore artifacts and its auxiliary and service vessels without establishing exigent standards does not precisely promotes safety in navigation, and that the lack of an international regime of prevention, contention and cleanliness of hydrocarbons leakages and spills caused by offshore artifacts does not help to attain cleaner seas.

Moreover, the adoption of the MODU Code by IMO also appears to be contradictory with such statement of IMO's constitutive Convention. Also the SUA antiterrorism Convention and the OPRC Conventions apply to Offshore crafts<sup>9</sup>. How IMO could allege its lack of jurisdiction on the Offshore Activity when it has already regulated it?

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<sup>9</sup> International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC) are required to establish measures for dealing with pollution incidents, either nationally or in co-operation with other countries. Ships are required to carry a shipboard oil pollution emergency plan. Operators of offshore units under the jurisdiction of Parties are also required to have oil pollution emergency plans or similar arrangements which must be co-ordinated with national systems for responding promptly and effectively to oil pollution incidents. Parties to the convention are required to provide assistance to

Frankly, after analyzing legal issues relating to the definition of vessels in international conventions, Dr. Balkin concluded that is not a strictly legal problem, but that it relates to a political issue- States do not want to resign their sovereignty over Continental Shelves and Economic Exclusive Zones and resist to subscribe an international convention relative to Offshore activity, which they understand may limit their jurisdictional powers over those areas.

##### 5. *Conclusions of the IIDM Position Paper*

Does the decision of the IMO Legal Committee close the doors to the work of an international convention regulating the topic?

The IIDM does not believe so. Bilateral or regional agreements may have very different standards, exigencies and levels of compensation , which goes against the uniformity desired in issues related to Maritime Law and Sea Law –as long as they are considered autonomous- and Environmental Law.

Also, standards may directly fail to exist, leaving some areas without coverage against transboundary pollution originated by the offshore extractive activity. Actually, they are scarce and with the exception of one instance, they do not address in an integral way the topic, nor a uniform system of liability and compensation can be extracted from them.

The IIDM believes that the recurrent lack of rapid and effective compensation after a transboundary pollution event as the one suffered by Indonesia may not be admitted.

William Sharpe, a Canadian colleague and member of the CMI IWG participated in the IDDRI workshop in 2012 and its lecture supports the need for an international convention uniformly regulating the subject. This is also supported by Wilye Spicer –also Canadian and member of the CMI IWG-in an excellent article devoted to offshore exploitation<sup>10</sup>. When you discuss with the lawyers that are working in this area –even with those that are Officers of IMO Legal Committee- most of them think that an international convention to regulate the matter is the best option.

Despite the IMO Legal Committee declined Indonesia's request for the IMO to prepare a convention, it invited interested parties to participate in an Intersessional Correspondence Group (ICG) led by Denmark and Indonesia. This group has been working on draft guidelines for bilateral or regional instruments dealing with liability and compensation for transboundary pollution damages, the so-called "Zero Draft". This group reported to the IMO

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others in the event of a pollution emergency and provision is made for the reimbursement of any assistance provided. The Convention provides for IMO to play an important co-ordinating role. A Protocol to the OPRC relating to hazardous and noxious substances (OPRC-HNS Protocol) was adopted in 2000.

<sup>10</sup> "Deepwater Horizon: Lessons for the Offshore", Dalhousie Law Journal, Vol. 37 N° 1, 2014.

Legal Committee in 2015. Afterwards, a meeting to discuss the guidelines was held in April 2015 and the July meeting at Yogyakarta followed. William Sharpe represented the CMI at Yogyakarta and explained the situation in the 19<sup>th</sup> Session of the Joint CMI/US MLA Conference held in New York in early May, 2016.

Regarding the Arctic ecosystem, due to its fragility and the absence of a convention protecting the pretensions of the States and the oil and gas companies –different from what happens in the Antarctic- we believe that it is essential that an international treaty be promoted to this effect, as well as for hydrocarbons exploitation in the seabed not submitted to sovereignty of any State.

Therefore, there exist as much practical requirements as institutional and academic opinions that encourage working on the design of an international convention unifying the regulation of the extractive offshore industry and, consequently, this task may and shall be treated in the IMO, whose recognized expertise in the fight against the pollution of the seas will be of utmost importance.

6. *Resolution of IMO Legal Committee in 2015*

Regrettably, the IMO Legal Committee did not accept the IIDM position paper and insisted on the resolution analyzed in Chapter 3.

Are we so blind that a new disaster should occur to force IMO to recognize the compulsory need for an International Convention on transboundary pollution originated in the Offshore Activities?

**SHIPPING LAW ISSUES RELATING TO  
PANDEMIC RESPONSE AT SEA**

*Pandemic no need to panic!*

by Natalie Shaw & Charles Darr

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## PANDEMIC NO NEED TO PANIC!

NATALIE SHAW\* & CHARLES DARR\*\*

This paper highlights a matter that has become increasingly of concern over the last ten years and which will continue to be an issue unless responsible actions are taken at all times by all flag and port States.

Seafarer wellbeing should be a given, and is addressed in international instruments, yet little regard appears to be paid to honouring these and ensuring the health and welfare of seafarers is always taken into account in national decisions at times of concerns regarding pandemic and infection control.

This paper is dedicated to James Lind. (1716 –1794) the Scottish physician and pioneer of naval hygiene. He conducted the first ever nautical clinical trial and developed a theory that citrus fruits cured scurvy. He argued for the health benefits of better ventilation aboard naval ships, improved cleanliness of sailors' bodies, clothing and bedding, and below-deck fumigation. He also proposed that fresh water could be obtained by distilling sea water. His work advanced the practice of preventive medicine at Sea and considerably improved seafarer life expectancy. His realisation that a Ship is a seafarer's home for months on end was the cornerstone of his work and had he been alive today we are sure he would have echoed our concerns.

### *Background*

Over the last 15 years has seen the emergence of SARS, Avian Flu, H1N1, Norovirus, Chikungunya, Ebola, MERS, and Zika Virus. These different health scares have all been deemed to have serious, and in some cases, pandemic potential. The main ones are as listed above in the order in which they caused concern. As time progresses other diseases new or recurrent will occur, again causing some panic for shore side and sea based populations.

ICS and CLIA both always aim to ensure seafarers can safely transit from point A to B and have necessary access to appropriate medical care, equipment and medication. We also recognise that many port States also have a role in ensuring their residents are protected from potential infection from potential carriers and that accordingly it may not be appropriate to remove certain

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\* Director of Employment Affairs, ICS.

\*\* Senior VP, Technical & Regulatory Affairs, CLIA.

potentially contagious individuals from their vessels. This is in effect the purpose of free pratique, a long standing principle which we fully support provided that those in danger receive the necessary adequate medical support from a distance, possibly via telemedical services, and if necessary that appropriate supplies are delivered at sea to a ship in a crisis situation.

In the last couple of years there have been cases where vessels with a small number of people on board that have contracted norovirus have not been allowed to disembark passengers. This is certainly not a critical disease in the pandemic sense and such actions create a situation of heightened concern for other crew and passengers on board than is in fact the reality which ultimately could cause panic to the detriment of safety onboard a vessel.

#### *Industry Level Collaboration*

Trade Associations + IMO + WHO + ICAO all work together in:

- Sharing of Best Practices and Experiences
- Leveraging Existing Work and Expertise
- Providing a Platform for Discussion and
- Harmonization of Approaches



Many readers will be familiar with The Great Plague of London from school history lessons. The worst outbreak of Bubonic Plague (also called the Black Death) happened in 1665 and arrived from Holland spread by blood-sucking fleas that lived on the black rat. It spread easily throughout London as

rubbish was emptied into the streets to form huge rotting piles where rats liked to breed.

In May that year, 43 deaths were recorded from the plague – by the summer as it became hotter the number rose rapidly to reach 26,219 in September.

Many wealthy people, including the king and his court, left London to escape the plague. Shops were shut and streets deserted. Women called searchers were paid 2p a day to find out the cause of all the deaths. When a person died of the plague, a red cross was painted on the door and the family nailed up inside the house for 40 days. No one except doctors or searchers could enter or leave. Whole families died in their homes. The Lord Mayor of London upon hearing rumours that it was spread by stray dogs and cats ordered them all to be destroyed yet the numbers of deaths rose further as there were no stray dogs and cats to kill the rats. Doctors tried to protect themselves against infection by wearing a special uniform that had:

- a mask which fully covered their head and a neck;
- two glass eyes;
- a beak stuffed with herbs to purify the air breathed;
- leather gloves to protect their hands;
- a long gown made from a wax covered thick material.

The person shown above with the beak reputed to be the Doctor at the time. Cures and treatments offered were ineffective and included asking victims to carry scented flowers, wear a lucky charm or use leaches to remove infected blood. At night, carts travelled the streets ringing bells and shouting “Bring out yer dead”. Soon all the churchyards were full and huge graves called plague-pits had to be dug to bury bodies.

As the autumn and winter cold weather arrived, deaths gradually reduced and the plague eventually disappeared. Whilst the preventative measures taken ultimately helped it was a change in weather that ultimately resulted in resolving the disease. Some of the incorrect notions are still maintained today as we will see with examples cited below and attitudes cited above are still prevalent in some African countries regarding Ebola and in Asia for the Zika Virus.

The picture overleaf is of a HUMAN BODY TEMPERATURE MONITORING SYSTEM, which provides a thermographic image of human body temperatures (typically the face) at a distance and compares it with that of an extremely precise blackbody calibration source at high speed – 30 frames per second – to provide what is considered an accurate body temperature measurement.





This type of equipment was purchased by a number of Asian Countries at the peak of the SARS crisis and is now being deployed in ports in China due to the current ZIKA virus scare. Whilst use of such equipment is applied to all travellers, its effectiveness is questioned by many parties including medics who are actively involved in the WHO discussions.

Whilst such equipment can detect a fever it does not necessarily mean that fever like symptoms emanate from any of the diseases cited above and may therefore unnecessarily raise anxiety amongst those with a cold or other minor illness that the ultimate diagnosis might be much more severe when in most situations this is not the case. ICS and CLIA believe that any measures taken to prevent spread of disease must be properly considered and appropriate.



Another example was the call by some parties for all seafarers to be issued with Space type suits to wear if a fellow seafarer was considered to be a potential Ebola carrier. Such suits are extremely difficult to get hold of and were correctly being prioritised for medical first responders in affected countries. If these calls were mandated it would have been impossible to source such equipment in a timely and safe manner and most importantly to have trained those required to wear it how to do so safely. There have subsequently been cases of Ebola shown in first responders such as Pauline Cafferky where such PPE was worn but where it had been incorrectly applied. Use of such equipment requires detailed significant training by highly qualified personnel which was certainly not possible for seafarers at the peak of the crisis.

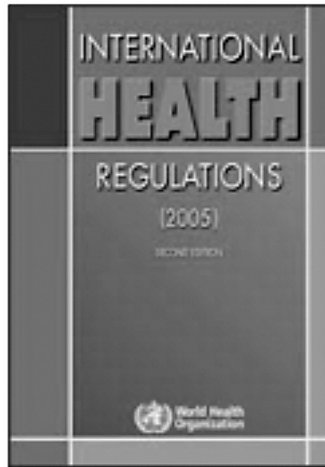
### *Pandemic Response*

ICS, CLIA and IMO are seeking to work in conjunction with CMI to determine the most appropriate legal measures to use to protect seafarer and passenger health and rights during a medical emergency determined by the World Health Organisation. This paper identifies the international authorities below who currently have legislation in this area. In addition we are keen to identify additional regional or national laws, which may also have an impact in this regard.

### *The World Health Organization (WHO)*

All WHO Members are automatically bound by any of its regulations unless they specifically state a reason to opt out. In reality, this rarely occurs as all State parties wish to be seen as firmly committed to the principles within the preamble to the WHO Constitution which include that:-

- Health is a state of complete physical, mental and social well-being and not merely absence of disease or infirmity.
- The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.
- The health of all peoples is fundamental to the attainment of peace and security and is dependent on the fullest co-operation of individuals and States.
- The achievement of any State in the promotion and protection of health is of value to all.
- Unequal development in different countries in promotion of health & control of diseases, especially communicable disease, is a common danger.
- Extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health.
- Informed opinion and active co-operation of the public are of the utmost importance in improvement of the health of the people. Governments have a responsibility for the health of their peoples which can be fulfilled only by providing adequate health and social measures.



*The International Health Regulations (2005)*

The International Health Regulations (IHR) provide an international legal instrument that is binding on 196 countries globally, including all WHO Member States. They aim to help the international community prevent and respond to acute public health risks that have the potential to cross borders and threaten people worldwide. Upon entry into force in 15 June 2007, it required countries to report certain disease outbreaks and public health events to WHO. Building on the unique experience of WHO in global disease surveillance, alert and response, the IHR defines rights and obligations of countries to report public health events, and establish procedures that WHO must follow in its work to uphold global public health security. IHR Signatory Countries are also likely to be party to other international Conventions of the UN, ILO and IMO.

The following sections are the most relevant for the purposes of this paper:- the Articles, Parts iv, v and vi. Part vii, Article 43 on additional measures should also be reviewed as this is at the heart of our concern. Article 12 is also key.

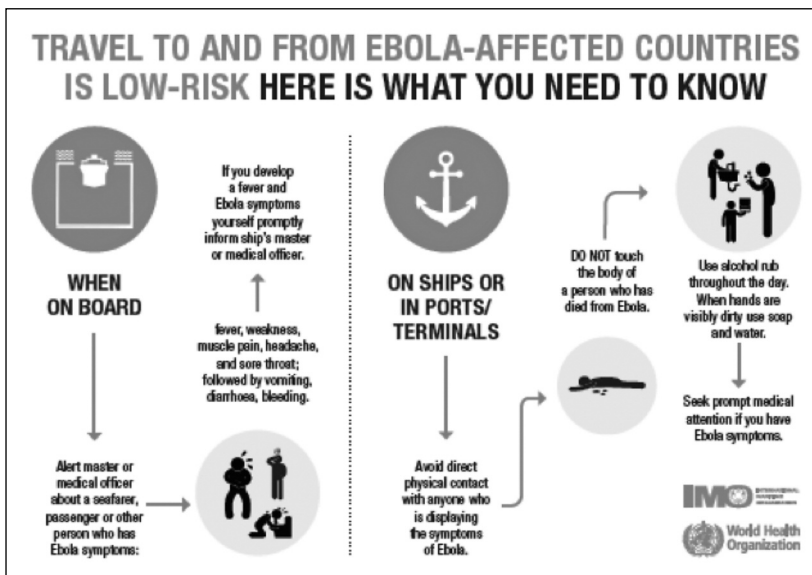
Adverse measures negatively affect trade and ship movements which must be avoided whilst working in line with the IHR guidance. Both ILO and IMO advocate and fully support the principle of free Pratique. This is enshrined in both the ILO MLC 2006 and the IMO FAL Convention. It seeks to ensure that no seafarer shall be disadvantaged in terms of medical care and that appropriate assistance on board will be given when Pratique, - the license given to a ship to enter port on assurance from the captain to convince the authorities that she is free from contagious disease, is denied. FAL Chapter 6 contains information on Public health and quarantine and sanitary measures for animals and plants.

The appropriate MLC 2006 measures are contained in Article iv This states:

- Each Seafarer has a right to health protection, medical care, welfare measures and other forms of Social Protection.

This principle is further expanded upon in Title 4 of the Convention in the Regulation, Standard and Guideline 4.1

Furthermore the STCW convention lays out basic principles for emergency first aid but these are not adequate to deal with serious situations where medical evacuations are required.



The chart above has been produced jointly by IMO and ILO in response to the Ebola virus and was widely disseminated by shipping companies following concerns. It would be useful if a similar tool could also be produced in relation to Zika virus and other diseases as and when they emerge.

The map overleaf identifies countries currently known to have cases of the Zika Virus in the Americas. It is also known to circulate in Africa, Asia and the Pacific.

ICS and CLIA have advised our member associations on the current outbreak of Zika Virus in Latin America and have advised operators to utilise information disseminated by the WHO. IMO has issued a relevant circular to provide guidance and the US Coast Guard has issued a Maritime Safety Information Bulletin informing on the associated risks. Much of their information has been gained by working in close collaboration with the CDC.

The Zika virus is a disease cause by a virus transmitted by Aedes

mosquitos. A news bulletin stated that there is currently a drive here in New York to try and use native Mosquitos which are related to those carrying the Zika virus to see if they can be used to form a suitable vaccine. New Yorkers have been asked to go out into their back yards and to collect larvae, so if you are bored collect a jar and go hunting. Who knows you may help in the fight to find a suitable cure quickly!



People who are symptomatic with Zika Virus typically have a mild fever, skin rash (exanthema) and conjunctivitis. These symptoms normally last for 2 - 7 days. Currently there is no specific treatment or vaccine available. The best form of protection is against mosquito bites. The virus might be spread through blood transfusions and sexual contact in addition to mosquito bites.

There is known to be a period of incubation and WHO currently advises that If you are pregnant and live in an area without Zika, avoid travelling to places with the virus. If your partner travels to an area with Zika, and you want to have sexual relations upon their return, have safe sex for at least four weeks. This is now causing concern to seafarers who are due to return home on leave if they for example have been to Brazil and are due to return home a fortnight later. Indeed Chinese seafarers are now being screened before being allowed into China to see if they may be carriers.

The US Centers for Disease Control and Prevention (CDC) confirmed last month that the Zika virus can cause severe birth defects, including microcephaly. Hundreds of babies were born in Brazil last year with microcephaly, a syndrome where children are born with unusually small heads. The defects coincided with a spike in Zika infections, leading experts to suspect the mosquito-borne virus, and research has now affirmed those experts' suspicions, the CDC said.

ICS and CLIA are monitoring the situation very closely and taking into account information provided by all reliable sources, including WHO and the CDC, and advising seafarers of appropriate actions as these are published.

### *The Core Issue*

The Lima" or "Yellow Jack" when flown in harbour means a ship is under quarantine. During the recent Ebola outbreak, and also with the past concerns regarding H1 N1, Avian Flu, SARS and Chikungunya, ships have been denied medical assistance by port States in attempts to secure the health of their nationals. Whilst the rationale for these measures is fully understood, seafarers must receive medical care which is adequate and appropriate, should a medical emergency occur on ship. Cargo ships, in particular, do not have fully trained medics on board. Even cruise ships, which normally have fully trained medical personnel and better equipped facilities, can only support patients in the short term and will need to be backed up by more robust shore based facilities.

It is important to know what action can be taken to try to ensure States take their responsibilities towards appropriate provision of medical care to crew and passengers seriously and do not try to abrogate their responsibilities.

ICS, CLIA and IMO are keen to establish:-

- the measures States adopted during the recent Ebola outbreak and who in their country was responsible for these measures;
- if the maritime administrations were consulted when national decisions were being made;
- whether or not those making the decisions were aware of all the requirements of the MLC, the FAL Convention and the IHR 2005, the potential conflict of requirements between them.

To date 5 surveys received from: Ireland, Panama, Korea, Finland & Greece. In order to get a global picture many more responses are required.

If you can assist in this regard responses should be submitted to CMI secretariat. The more data received the better informed we will be.

ICS and CLIA have also proposed the formation of a CMI Pandemic review group to determine next actions.

Let's not put our heads in the sand, but try to be proactive to ensure the right information is given to seafarers at the right time and in the right manner.

PART III \*

**Status of ratifications to  
Maritime Conventions**

**Etat des ratifications  
aux conventions de Droit Maritime**

*\* Although Comité Maritime International has made all efforts to produce accurate and correct informations as at the date of 30 December 2016 regarding the status of ratifications of Maritime Conventions, readers should address to the Official Depositaries of the Conventions to verify all information contained there.*

**ETAT DES  
RATIFICATIONS ET ADHESIONS  
AUX CONVENTIONS INTERNATIONALES  
DE DROIT MARITIME DE BRUXELLES**

(Information communiquée par le Ministère des Affaires Etrangères,  
du Commerce Extérieur et de la Coopération au Développement  
de Belgique, dépositaire des Conventions).

*Notes de l'éditeur*

(1) - Les dates mentionnées sont les dates du dépôt des instruments. L'indication (r) signifie ratification, (a) adhésion.

(2) - Les Etats dont le nom est suivi par un astérisque ont fait des réserves. Un résumé du texte de ces réserves est publié après la liste des ratifications de chaque Convention.

(3) - Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonciation prend effet.



**STATUS OF THE  
RATIFICATIONS OF AND ACCESSIONS  
TO THE BRUSSELS INTERNATIONAL MARITIME  
LAW CONVENTIONS**

(Information provided by the Ministère des Affaires Etrangères,  
du Commerce Extérieur et de la Coopération au Développement de Belgique,  
depository of the Conventions).

*Editor's notes:*

(1) - The dates mentioned are the dates of the deposit of instruments. The indication (r) stands for ratification, (a) for accession.

(2) - The States whose names are followed by an asterisk have made reservations. The text of such reservations is published, in a summary form, at the end of the list of ratifications of each convention.

(3) - The dates mentioned in respect of the denunciation are the dates when the denunciation takes effect.

**Convention internationale pour  
l'unification de certaines  
règles en matière  
d'Abordage  
et protocole de signature**

Bruxelles, le 23 septembre 1910  
Entrée en vigueur: 1er mars 1913

**International convention  
for the unification of certain  
rules of law relating to  
Collision between vessels  
and protocol of signature**

Brussels, 23<sup>rd</sup> September, 1910  
Entered into force: 1 March 1913

*(Translation)*

<b>Angola</b>	<b>(a)</b>	20.VII.1914
<b>Antigua and Barbuda</b>	<b>(a)</b>	1.II.1913
<b>Argentina</b>	<b>(a)</b>	28.II.1922
<b>Australia</b>	<b>(a)</b>	9.IX.1930
<b>Norfolk Island</b>	<b>(a)</b>	1.II.1913
<b>Austria</b>	<b>(r)</b>	1.II.1913
<b>Bahamas</b>	<b>(a)</b>	1.II.1913
<b>Belize</b>	<b>(a)</b>	1.II.1913
<b>Barbados</b>	<b>(a)</b>	1.II.1913
<b>Belgium</b>	<b>(r)</b>	1.II.1913
<b>Brazil</b>	<b>(r)</b>	31.XII.1913
<b>Canada</b>	<b>(a)</b>	25.IX.1914
<b>Cape Verde</b>	<b>(a)</b>	20.VII.1914
<b>China</b>	<b>(a)</b>	28.IX.1994
<b>China, Hong Kong<sup>(1)</sup></b>	<b>(a)</b>	1.II.1913
<b>China, Macao<sup>(2)</sup></b>	<b>(r)</b>	25.XII.1913
<b>Cyprus</b>	<b>(a)</b>	1.II.1913
<b>Croatia</b>	<b>(a)</b>	30.VII.1992
<b>Denmark</b>	<b>(r)</b>	18.VI.1913
<b>Dominican Republic</b>	<b>(a)</b>	1.II.1913
<b>Egypt</b>	<b>(a)</b>	29.XI.1943
<b>Estonia</b>	<b>(a)</b>	15.V.1929
<b>Fiji</b>	<b>(a)</b>	1.II.1913
<b>Finland</b>	<b>(a)</b>	17.VII.1923

<sup>(1)</sup> With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

<sup>(2)</sup> With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Abordage 1910**Collision 1910*

<b>France</b>	<b>(r)</b>	1.II.1913
<b>Gambia</b>	<b>(a)</b>	1.II.1913
<b>Germany</b>	<b>(r)</b>	1.II.1913
<b>Ghana</b>	<b>(a)</b>	1.II.1913
<b>Goa</b>	<b>(a)</b>	20.VII.1914
<b>Greece</b>	<b>(r)</b>	29.IX.1913
<b>Grenada</b>	<b>(a)</b>	1.II.1913
<b>Guinea-Bissau</b>	<b>(a)</b>	20.VII.1914
<b>Guyana</b>	<b>(a)</b>	1.II.1913
<b>Haiti</b>	<b>(a)</b>	18.VIII.1951
<b>Hungary</b>	<b>(r)</b>	1.II.1913
<b>India</b>	<b>(a)</b>	1.II.1913
<b>Iran</b>	<b>(a)</b>	26.IV.1966
<b>Ireland</b>	<b>(r)</b>	1.II.1913
<b>Italy</b>	<b>(r)</b>	2.VI.1913
<b>Jamaica</b>	<b>(a)</b>	1.II.1913
<b>Japan</b>	<b>(r)</b>	12.I.1914
<b>Kenya</b>	<b>(a)</b>	1.II.1913
<b>Kiribati</b>	<b>(a)</b>	1.II.1913
<b>Latvia</b>	<b>(a)</b>	2.VIII.1932
<b>Luxembourg</b>	<b>(a)</b>	18.II.1991
<b>Libyan Arab Jamahiriya</b>	<b>(a)</b>	9.XI.1934
<b>Macao</b>	<b>(a)</b>	20.VII.1914
<b>Madagascar</b>	<b>(r)</b>	1.II.1913
<b>Malaysia</b>	<b>(a)</b>	1.II.1913
<b>Malta</b>	<b>(a)</b>	1.II.1913
<b>Mauritius</b>	<b>(a)</b>	1.II.1913
<b>Mexico</b>	<b>(r)</b>	1.II.1913
<b>Mozambique</b>	<b>(a)</b>	20.VII.1914
<b>Netherlands</b>	<b>(r)</b>	1.II.1913
<b>Newfoundland</b>	<b>(a)</b>	11.III.1914
<b>New Zealand</b>	<b>(a)</b>	19.V.1913
<b>Nicaragua</b>	<b>(r)</b>	18.VII.1913
<b>Nigeria</b>	<b>(a)</b>	1.II.1913
<b>Norway</b>	<b>(r)</b>	12.XI.1913
<b>Papua New Guinea</b>	<b>(a)</b>	1.II.1913
<b>Paraguay</b>	<b>(a)</b>	22.XI.1967
<b>Poland</b>	<b>(a)</b>	2.VI.1922
<b>Portugal</b>	<b>(r)</b>	25.VII.1913
<b>Romania</b>	<b>(r)</b>	1.II.1913
<b>Russian Federation<sup>(3)</sup></b>	<b>(r)</b>	10.VII.1936
<b>Saint Kitts and Nevis</b>	<b>(a)</b>	1.II.1913

<sup>(3)</sup> Pursuant to a notification of the Ministry of foreign affairs of the Russian Federation dated 13th January 1992, the Russian Federation is now a party to all treaties to which the U.S.S.R. was a party. Russia had ratified the convention on the 1st February 1913.

*Assistance et sauvetage 1910**Assistance and salvage 1910*

<b>Saint Lucia</b>	<b>(a)</b>	1.II.1913
<b>Saint Vincent and the Grenadines</b>	<b>(a)</b>	1.II.1913
<b>Solomon Islands</b>	<b>(a)</b>	1.II.1913
<b>Sao Tome and Principe</b>	<b>(a)</b>	20.VII.1914
<b>Seychelles</b>	<b>(a)</b>	1.II.1913
<b>Sierra Leone</b>	<b>(a)</b>	1.II.1913
<b>Singapore</b>	<b>(a)</b>	1.II.1913
<b>Slovenia</b>	<b>(a)</b>	13.X.1993
<b>Somalia</b>	<b>(a)</b>	1.II.1913
<b>Spain</b>	<b>(a)</b>	17.XI.1923
<b>Sri-Lanka</b>	<b>(a)</b>	1.II.1913
<b>Sweden</b>	<b>(r)</b>	12.XI.1913
<b>Switzerland</b>	<b>(a)</b>	28.V.1954
<b>Timor</b>	<b>(a)</b>	20.VII.1914
<b>Tonga</b>	<b>(a)</b>	13.VI.1978
<b>Trinidad and Tobago</b>	<b>(a)</b>	1.II.1913
<b>Turkey</b>	<b>(a)</b>	4.VII.1955
<b>Tuvalu</b>	<b>(a)</b>	1.II.1913
<b>United Kingdom</b>	<b>(r)</b>	1.II.1913
<b>Jersey, Guernsey, Isle of Man, Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, Cayman Islands, British Virgin Islands, Montserrat, Caicos &amp; Turks Islands. Saint Helena, Wei-Hai-Wei</b>	<b>(a)</b>	1.II.1913
<b>Uruguay</b>	<b>(a)</b>	21.VII.1915
<b>Zaire</b>	<b>(a)</b>	17.VII.1967

**Convention internationale  
pour l'unification de certaines  
règles en matière**

**d'Assistance et de sauvetage  
maritimes  
et protocole de signature**

Bruxelles, le 23 septembre 1910  
Entrée en vigueur: 1 mars 1913

**Algeria**  
**Angola**  
**Antigua and Barbuda**  
**Argentina**

**International convention  
for the unification of  
certain rules of law  
relating to**

**Assistance and salvage at  
sea  
and protocol of signature**

Brussels, 23<sup>rd</sup> September, 1910  
Entered into force: 1 March 1913

*(Translation)*

**(a)** 13.IV.1964  
**(a)** 20.VII.1914  
**(a)** 1.II.1913  
**(a)** 28.II.1922

*Assistance et sauvetage 1910**Assistance and salvage 1910*

<b>Australia</b>	<b>(a)</b>	9.IX.1930
<b>Austria</b>	<b>(r)</b>	1.II.1913
<b>Bahamas</b>	<b>(a)</b>	1.II.1913
<b>Barbados</b>	<b>(a)</b>	1.II.1913
<b>Belgium</b>	<b>(r)</b>	1.II.1913
<b>Belize</b>	<b>(a)</b>	1.II.1913
<b>Brazil</b>	<b>(r)</b>	31.XII.1913
<b>Canada</b>	<b>(a)</b>	25.IX.1914
<i>(denunciation 22.XI.1994)</i>		
<b>Cape Verde</b>	<b>(a)</b>	20.VII.1914
<b>China</b>		
<b>Hong Kong<sup>(1)</sup></b>	<b>(a)</b>	1.II.1913
<b>Macao<sup>(2)</sup></b>	<b>(r)</b>	25.VII.1913
<b>Cyprus</b>	<b>(a)</b>	1.II.1913
<b>Congo</b>	<b>(a)</b>	17.VII.1967
<b>Croatia</b>	<b>(a)</b>	8.X.1991
<i>(denunciation 16.III.2000)</i>		
<b>Denmark</b>	<b>(r)</b>	18.VI.1913
<i>(denunciation 1.IX.1995)</i>		
<b>Dominican Republic</b>	<b>(a)</b>	23.VII.1958
<b>Egypt</b>	<b>(a)</b>	19.XI.1943
<b>Estonia</b>	<b>(a)</b>	15.V.1929
<b>Fiji</b>	<b>(a)</b>	1.II.1913
<b>Finland</b>	<b>(a)</b>	17.VII.1923
<b>France</b>	<b>(r)</b>	1.II.1913
<b>Gambia</b>	<b>(a)</b>	1.II.1913
<b>Germany</b>	<b>(r)</b>	1.II.1913
<i>(denunciation 8.X.2001)</i>		
<b>Ghana</b>	<b>(a)</b>	1.II.1913
<b>Goa</b>	<b>(a)</b>	20.VII.1914
<b>Greece</b>	<b>(r)</b>	15.X.1913
<b>Grenada</b>	<b>(a)</b>	1.II.1913
<b>Guinea-Bissau</b>	<b>(a)</b>	20.VII.1914
<b>Guyana</b>	<b>(a)</b>	1.II.1913
<b>Haiti</b>	<b>(a)</b>	18.VIII.1951
<b>Hungary</b>	<b>(r)</b>	1.II.1913

<sup>(1)</sup> With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

<sup>(2)</sup> With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Salvage Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Assistance et sauvetage 1910**Assistance and salvage 1910*

<b>India</b>	(a)	1.II.1913
<b>Iran</b> (denunciation 11.VII.2000)	(a)	26.IV.1966
<b>Ireland</b>	(r)	1.II.1913
<b>Italy</b>	(r)	2.VI.1913
<b>Jamaica</b>	(a)	1.II.1913
<b>Japan</b>	(r)	12.I.1914
<b>Kenya</b>	(a)	1.II.1913
<b>Kiribati</b>	(a)	1.II.1913
<b>Latvia</b>	(a)	2.VIII.1932
<b>Luxembourg</b>	(a)	18.II.1991
<b>Malaysia</b>	(a)	1.II.1913
<b>Madagascar</b>	(r)	1.II.1913
<b>Mauritius</b>	(a)	1.II.1913
<b>Mexico</b>	(r)	1.II.1913
<b>Mozambique</b>	(a)	20.VII.1914
<b>Netherlands</b> (denunciation 10.XII.1997)	(r)	1.II.1913
<b>Newfoundland</b>	(a)	11.III.1914
<b>New Zealand</b> (denunciation 20.V.2003)	(a)	19.V.1913
<b>Nigeria</b>	(a)	1.II.1913
<b>Norway</b> (denunciation 9.XII.1996)	(r)	12.XI.1913
<b>Norfolk Island</b>	(a)	1.II.1913
<b>Oman</b>	(a)	21.VIII.1975
<b>Papua - New Guinea</b>	(a)	1.II.1913
<b>Paraguay</b>	(a)	22.XI.1967
<b>Poland</b>	(a)	15.X.1921
<b>Portugal</b>	(r)	25.VII.1913
<b>Romania</b>	(r)	1.II.1913
<b>Russian Federation</b>	(a)	10.VII.1936
<b>Saint Kitts and Nevis</b>	(a)	1.II.1913
<b>Saint Lucia</b>	(a)	3.III.1913
<b>Saint Vincent and the Grenadines</b>	(a)	1.II.1913
<b>Solomon Islands</b>	(a)	1.II.1913
<b>Sao Tomé and Príncipe</b>	(a)	20.VII.1914
<b>Seychelles</b>	(a)	1.II.1913
<b>Sierra Leone</b>	(a)	1.II.1913
<b>Singapore</b>	(a)	1.II.1913
<b>Slovenia</b>	(a)	13.X.1993
<b>Somalia</b>	(a)	1.II.1913
<b>Spain</b> (denunciation 19.I.2005)	(a)	17.XI.1923
<b>Sri Lanka</b>	(a)	1.II.1913
<b>Sweden</b> (denunciation 19.XII.1995)	(r)	12.XI.1913
<b>Switzerland</b>	(a)	28.V.1954
<b>Syrian Arab Republic</b>	(a)	1.VIII.1974
<b>Timor</b>	(a)	20.VII.1914

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*Assistance et sauvetage 1910 - Protocole 1967      Assistance and salvage - Protocol 1967*

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<b>Tonga</b>	<b>(a)</b>	13.VI.1978
<b>Trinidad and Tobago</b>	<b>(a)</b>	1.II.1913
<b>Turkey</b>	<b>(a)</b>	4.VII.1955
<b>Tuvalu</b>	<b>(a)</b>	1.II.1913
<b>United Kingdom <sup>(3)</sup></b>	<b>(r)</b>	1.II.1913
<b>Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, British Virgin Islands, Montserrat, Turks &amp; Caicos Islands, Saint Helena</b>	<b>(a)</b>	1.II.1913
<i>(denunciation 12.XII.1994 effective also for Falkland Islands, Montserrat, South Georgia and South Sandwich Islands)</i>		
<b>United States of America</b>	<b>(r)</b>	1.II.1913
<b>Uruguay</b>	<b>(a)</b>	21.VII.1915
<b>Zaire</b>	<b>(a)</b>	17.VII.1967

**Protocole portant modification  
de la convention internationale  
pour l'unification de  
certaines règles en matière  
d'Assistance et de sauvetage  
maritimes**

**Signée a Bruxelles, le 23  
septembre 1910**

Bruxelles, 27 mai 1967  
Entré en vigueur: 15 août 1977

**Protocol to amend  
the international convention for  
the unification of certain  
rules of law relating to  
Assistance and salvage at  
sea**

**Signed at Brussels on 23<sup>rd</sup>  
September, 1910**

Brussels, 27<sup>th</sup> May 1967  
Entered into force: 15 August 1977

<b>Austria</b>	<b>(r)</b>	4.IV.1974
<b>Belgium</b>	<b>(r)</b>	11.IV.1973
<b>Brazil</b>	<b>(r)</b>	8.XI.1982
<b>Croatia</b>	<b>(r)</b>	8.X.1991
<i>(denunciation 16.III.2000)</i>		
<b>Egypt</b>	<b>(r)</b>	15.VII.1977
<b>Jersey, Guernsey &amp; Isle of Man</b>	<b>(a)</b>	22.VI.1977
<b>Papua New Guinea</b>	<b>(a)</b>	14.X.1980
<b>Slovenia</b>	<b>(a)</b>	13.X.1993
<b>Syrian Arab Republic</b>	<b>(a)</b>	1.VIII.1974
<b>United Kingdom</b>	<b>(r)</b>	9.IX.1974

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<sup>(3)</sup> Including Jersey, Guernsey and Isle of Man.

*Limitation de responsabilité 1924**Limitation of liability 1924*

**Convention internationale pour  
l'unification de certaines  
règles concernant la  
Limitation de la responsabilité  
des propriétaires  
de navires de mer  
et protocole de signature**

Bruxelles, 25 août 1924  
Entrée en vigueur: 2 juin 1931

**International convention for  
the unification of certain  
rules relating to the  
Limitation of the liability  
of owners  
of sea-going vessels  
and protocol of signature**

Brussels, 25<sup>th</sup> August 1924  
Entered into force: 2 June 1931

<b>Belgium</b>	<b>(r)</b>	2.VI.1930
<b>Brazil</b>	<b>(r)</b>	28.IV.1931
<b>Denmark</b> <i>(denunciation - 30. VI. 1963)</i>	<b>(r)</b>	2.VI.1930
<b>Dominican Republic</b>	<b>(a)</b>	23.VII.1958
<b>Finland</b> <i>(denunciation - 30.VI.1963)</i>	<b>(a)</b>	12.VII.1934
<b>France</b> <i>(denunciation - 26.X.1976)</i>	<b>(r)</b>	23.VIII.1935
<b>Hungary</b>	<b>(r)</b>	2.VI.1930
<b>Madagascar</b>	<b>(r)</b>	23.VIII.1935
<b>Monaco</b> <i>(denunciation - 24.I.1977)</i>	<b>(r)</b>	15.V.1931
<b>Norway</b> <i>(denunciation - 30.VI.1963)</i>	<b>(r)</b>	10.X.1933
<b>Poland</b>	<b>(r)</b>	26.X.1936
<b>Portugal</b>	<b>(r)</b>	2.VI.1930
<b>Spain</b> <i>(denunciation - 4.I.2006)</i>	<b>(r)</b>	2.VI.1930
<b>Sweden</b> <i>(denunciation - 30.VI.1963)</i>	<b>(r)</b>	1.VII.1938
<b>Turkey</b>	<b>(a)</b>	4.VII.1955



**Convention internationale pour  
l'unification de certaines  
règles en matière de  
Connaissance  
et protocole de signature  
“Règles de La Haye 1924”**

Bruxelles, le 25 août 1924  
Entrée en vigueur: 2 juin 1931

**International convention for  
the unification of certain  
rules of law relating to  
Bills of lading  
and protocol of signature  
“Hague Rules 1924”**

Brussels, 25<sup>th</sup> August 1924  
Entered into force: 2 June 1931

(Translation)

<b>Algeria</b>	<b>(a)</b>	13.IV.1964
<b>Angola</b>	<b>(a)</b>	2.II.1952
<b>Antigua and Barbuda</b>	<b>(a)</b>	2.XII.1930
<b>Argentina</b>	<b>(a)</b>	19.IV.1961
<b>Australia*</b>	<b>(a)</b>	4.VII.1955
<i>(denunciation - 16.VII.1992)</i>		
<b>Norfolk</b>	<b>(a)</b>	4. VII.1955
<b>Bahamas</b>	<b>(a)</b>	2.XII.1930
<b>Barbados</b>	<b>(a)</b>	2.XII.1930
<b>Belgium</b>	<b>(r)</b>	2. VI.1930
<b>Belize</b>	<b>(a)</b>	2.XI.1930
<b>Bolivia</b>	<b>(a)</b>	28.V.1982
<b>Cameroon</b>	<b>(a)</b>	2.XII.1930
<b>Cape Verde</b>	<b>(a)</b>	2.II.1952
<b>China</b>		
<b>Hong Kong<sup>(1)</sup></b>	<b>(a)</b>	2.XII.1930
<i>(denunciation – 20.X.1983)</i>		
<b>Macao<sup>(2)</sup></b>	<b>(r)</b>	2.II.1952
<b>Cyprus</b>	<b>(a)</b>	2.XII.1930
<b>Congo</b>	<b>(a)</b>	17.VII.1967
<b>Croatia</b>	<b>(r)</b>	30.VII.1992
<b>Cuba*</b>	<b>(a)</b>	25.VII.1977
<b>Denmark*</b>	<b>(a)</b>	I.VII.1938
<i>(denunciation – 1.III.1984)</i>		
<b>Dominican Republic</b>	<b>(a)</b>	2.XII.1930

<sup>(1)</sup> With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

<sup>(2)</sup> With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Règles de La Haye**Hague Rules*

<b>Ecuador</b>	(a)	23.III.1977
<b>Egypt</b>	(a)	29.XI.1943
<i>(denunciation - 1.XI.1996)</i>		
<b>Fiji</b>	(a)	2.XII.1930
<b>Finland</b>	(a)	1.VII.1939
<i>(denunciation - 1.III.1984)</i>		
<b>France*</b>	(r)	4.I.1937
<b>Gambia</b>	(a)	2.XII.1930
<b>Germany</b>	(r)	1.VII.1939
<b>Ghana</b>	(a)	2.XII.1930
<b>Goa</b>	(a)	2.II.1952
<b>Greece</b>	(a)	23.III.1993
<b>Grenada</b>	(a)	2.XII.1930
<b>Guyana</b>	(a)	2.XII.1930
<b>Guinea-Bissau</b>	(a)	2.II.1952
<b>Hungary</b>	(r)	2.VI.1930
<b>Iran</b>	(a)	26.IV.1966
<b>Ireland*</b>	(a)	30.I.1962
<b>Israel</b>	(a)	5.IX.1959
<b>Italy</b>	(r)	7.X.1938
<i>(denunciation - 22.XI.1984)</i>		
<b>Ivory Coast*</b>	(a)	15.XII.1961
<b>Jamaica</b>	(a)	2.XII.1930
<b>Japan*</b>	(r)	1.VII.1957
<i>(denunciation - 1. VI.1992)</i>		
<b>Kenya</b>	(a)	2.XII.1930
<b>Kiribati</b>	(a)	2.XII.1930
<b>Kuwait*</b>	(a)	25.VII.1969
<b>Latvia</b>	(a)	4.IV.2002
<b>Lebanon</b>	(a)	19.VII.1975
<i>(denunciation - 1.XI.1996)</i>		
<b>Lithuania</b>	(a)	2.XII.2003
<b>Luxembourg</b>	(a)	18.II.1991
<b>Malaysia</b>	(a)	2.XII.1930
<b>Madagascar</b>	(a)	13.VII.1965
<b>Mauritius</b>	(a)	24.VIII.1970
<b>Monaco</b>	(a)	15.V.1931
<b>Mozambique</b>	(a)	2.II.1952
<b>Nauru*</b>	(a)	4.VII.1955
<b>Netherlands*</b>	(a)	18.VIII.1956
<i>(denunciation - 26.IV.1982)</i>		
<b>Nigeria</b>	(a)	2.XII.1930
<b>North Borneo</b>	(a)	2.XII.1930
<b>Norway</b>	(a)	1.VII.1938
<i>(denunciation - 1.III.1984)</i>		
<b>Palestine</b>	(a)	2.XII.1930
<b>Papua New Guinea*</b>	(a)	4.VII.1955
<b>Paraguay</b>	(a)	22.XI.1967
<b>Peru</b>	(a)	29.X.1964
<b>Poland</b>	(r)	26.X.1936
<b>Portugal</b>	(a)	24.XII.1931

<b>Romania</b>	<b>(r)</b>	4.VIII.1937
<i>(denunciation – 18.III.2002)</i>		
<b>Sao Tomé and Príncipe</b>	<b>(a)</b>	2.II.1952
<b>Sarawak</b>	<b>(a)</b>	3.XI.1931
<b>Senegal</b>	<b>(a)</b>	14.II.1978
<b>Seychelles</b>	<b>(a)</b>	2.XII.1930
<b>Sierra-Leone</b>	<b>(a)</b>	2.XII.1930
<b>Singapore</b>	<b>(a)</b>	2.XII.1930
<b>Slovenia</b>	<b>(a)</b>	15.V.1996
<b>Solomon Islands</b>	<b>(a)</b>	2.XII.1930
<b>Somalia</b>	<b>(a)</b>	2.XII.1930
<b>Spain</b>	<b>(r)</b>	2.VI.1930
<i>(denunciation *)</i>		
<b>Sri-Lanka</b>	<b>(a)</b>	2.XII.1930
<b>St. Kitts and Nevis</b>	<b>(a)</b>	2.XII.1930
<b>St. Lucia</b>	<b>(a)</b>	2.XII.1930
<b>St. Vincent and the Grenadines</b>	<b>(a)</b>	2.XII.1930
<i>(denunciation – 22.VII.2002)</i>		
<b>Sweden</b>	<b>(a)</b>	1.VII.1938
<i>(denunciation – 1.III.1984)</i>		
<b>Switzerland*</b>	<b>(a)</b>	28.V.1954
<b>Syrian Arab Republic</b>	<b>(a)</b>	1.VIII.1974
<b>Tanzania (United Republic of)</b>	<b>(a)</b>	3.XII.1962
<b>Timor</b>	<b>(a)</b>	2.II.1952
<b>Tonga</b>	<b>(a)</b>	2.XII.1930
<b>Trinidad and Tobago</b>	<b>(a)</b>	2.XII.1930
<b>Turkey</b>	<b>(a)</b>	4.VII.1955
<b>Tuvalu</b>	<b>(a)</b>	2.XII.1930
<b>United Kingdom of Great Britain and Northern Ireland (including Jersey and Isle of Man)*</b>	<b>(r)</b>	2.VI.1930
<i>(denunciation – 13.VI.1977)</i>		
<b>Gibraltar</b>	<b>(a)</b>	2.XII.1930
<i>(denunciation – 20.X.1983)</i>		
<b>Bermuda, Falkland Islands and dependencies, Turks &amp; Caicos Islands, Cayman Islands, British Virgin Islands, Montserrat, British Antarctic Territories.</b>		
<i>(denunciation 20.X.1983)</i>		
<b>Anguilla</b>	<b>(a)</b>	2.XII.1930
<b>Ascension, Saint Helène and Dependencies</b>	<b>(a)</b>	3.XI.1931
<b>United States of America*</b>	<b>(r)</b>	29.VI.1937
<b>Zaire</b>	<b>(a)</b>	17.VII.1967

(\*) Cette dénonciation s'est effectuée conformément à l'article 15 de la Convention. Tenant compte de l'article 89 de la convention des Nations Unies du 11 décembre 2008 sur le contrat de transport effectué entièrement ou partiellement par mer (ratifiée par le Royaume d'Espagne en date du 19 janvier 2011), la dénonciation de la Convention internationale prendra effet à la date à laquelle la Convention des Nations Unies entrera en vigueur à l'égard du Royaume d'Espagne.

## Reservations

### Australia

a) The Commonwealth of Australia reserves the right to exclude from the operation of legislation passed to give effect to the Convention the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the States of Australia.

b) The Commonwealth of Australia reserves the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

### Cuba

Le Gouvernement de Cuba se réserve le droit de ne pas appliquer les termes de la Convention au transport de marchandises en navigation de cabotage national.

### Denmark

...Cette adhésion est donnée sous la réserve que les autres Etats contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne le Danemark:

1) La Loi sur la navigation danoise en date du 7 mai 1937 continuera à permettre que dans le cabotage national les connaissements et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.

2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, dernier alinéa, de la loi danoise sur la navigation - le transport maritime entre le Danemark et les autres Etats nordiques, dont les lois sur la navigation contiennent des dispositions analogues.

3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome, le 23 novembre 1933, ne seront pas affectées par cette Convention."

### Egypt

...Nous avons résolu d'adhérer par les présentes à la dite Convention, et promettons de concourir à son application. L'Egypte est, toutefois, d'avis que la Convention, dans sa totalité, ne s'applique pas au cabotage national. En conséquence, l'Egypte se réserve le droit de régler librement le cabotage national par sa propre législation...

### France

...En procédant à ce dépôt, l'Ambassadeur de France à Bruxelles déclare, conformément à l'article 13 de la Convention précitée, que l'acceptation que lui donne le Gouvernement Français ne s'applique à aucune des colonies, possessions, protectorats ou territoires d'outre-mer se trouvant sous sa souveraineté ou son autorité.

### Ireland

...Subject to the following declarations and reservations: 1. In relation to the carriage of goods by sea in ships carrying goods from any port in Ireland to any other port in Ireland or to a port in the United Kingdom, Ireland will apply Article 6 of the Convention as though the Article referred to goods of any class instead of to particular goods, and as though the proviso in the third paragraph of the said Article were omitted; 2. Ireland does not accept the provisions of the first paragraph of Article 9 of the Convention.

**Ivory Coast**

Le Gouvernement de la République de Côte d'Ivoire, en adhérant à ladite Convention précise que:

1) Pour l'application de l'article 9 de la Convention relatif à la valeur des unités monétaires employées, la limite de responsabilité est égale à la contre-valeur en francs CFA sur la base d'une livre or égale à deux livres sterling papier, au cours du change de l'arrivée du navire au port de déchargement.

2) Il se réserve le droit de réglementer par des dispositions particulières de la loi nationale le système de la limitation de responsabilité applicable aux transports maritimes entre deux ports de la république de Côte d'Ivoire.

**Japan**

*Statement at the time of signature, 25.8.1925.*

Au moment de procéder à la signature de la Convention Internationale pour l'unification de certaines règles en matière de connaissance, le soussigné, Plénipotentiaire du Japon, fait les réserves suivantes:

a) A l'article 4.

Le Japon se réserve jusqu'à nouvel ordre l'acceptation des dispositions du a) à l'alinéa 2 de l'article 4.

b) Le Japon est d'avis que la Convention dans sa totalité ne s'applique pas au cabotage national; par conséquent, il n'y aurait pas lieu d'en faire l'objet de dispositions au Protocole. Toutefois, s'il n'en pas ainsi, le Japon se réserve le droit de régler librement le cabotage national par sa propre législation.

*Statement at the time of ratification*

...Le Gouvernement du Japon déclare

1) qu'il se réserve l'application du premier paragraphe de l'article 9 de la Convention; 2) qu'il maintient la réserve b) formulée dans la Note annexée à la lettre de l'Ambassadeur du Japon à Monsieur le Ministre des Affaires étrangères de Belgique, du 25 août 1925, concernant le droit de régler librement le cabotage national par sa propre législation; et 3) qu'il retire la réserve a) de ladite Note, concernant les dispositions du a) à l'alinéa 2 de l'article 4 de la Convention.

**Kuwait**

Le montant maximum en cas de responsabilité pour perte ou dommage causé aux marchandises ou les concernant, dont question à l'article 4, paragraphe 5, est augmenté jusque £ 250 au lieu de £ 100.

*The above reservation has been rejected by France and Norway. The rejection of Norway has been withdrawn on 12 April 1974. By note of 30.3.1971, received by the Belgian Government on 30.4.1971 the Government of Kuwait stated that the amount of £ 250 must be replaced by Kuwait Dinars 250.*

**Nauru**

Reservations: a) the right to exclude from the operation of legislation passed to give effect to the Convention on the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the territory of Nauru; b) the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

**Netherlands**

...Désirant user de la faculté d'adhésion réservée aux Etats non-signataires par l'article 12 de la Convention internationale pour l'unification de certaines règles en matière de connaissance, avec Protocole de signature, conclue à Bruxelles, le 25 août 1924, nous avons résolu d'adhérer par les présentes, pour le Royaume en Europe, à ladite Convention, Protocole de signature, d'une manière définitive et promettons de

concourir à son application, tout en Nous réservant le droit, par prescription légale,

- 1) de préciser que dans les cas prévus par l'article 4, par. 2 de c) à p) de la Convention, le porteur du connaissance peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par l'article 4, par. 2 a) de la Convention;
- 2) d'appliquer, en ce qui concerne le cabotage national, l'article 6 à toutes les catégories de marchandises, sans tenir compte de la restriction figurant au dernier paragraphe dudit article, et sous réserve:
  - 1) que l'adhésion à la Convention ait lieu en faisant exclusion du premier paragraphe de l'article 9 de la Convention;
  - 2) que la loi néerlandaise puisse limiter les possibilités de fournir des preuves contraires contre le connaissance.

### Norway

...L'adhésion de la Norvège à la Convention internationale pour l'unification de certaines règles en matière de connaissance, signée à Bruxelles, le 25 août 1924, ainsi qu'au Protocole de signature y annexé, est donnée sous la réserve que les autres États contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne la Norvège:

- 1) La loi sur la navigation norvégienne continuera à permettre que dans le cabotage national les connaissances et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées ou soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.
- 2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, dernier alinéa, de la loi norvégienne sur la navigation - le transport maritime entre la Norvège et autres États nordiques, dont les lois sur la navigation contiennent des dispositions analogues.
- 3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome le 23 novembre 1933, ne seront pas affectées par cette Convention.

### Papua New Guinea

Reservations: a) the right to exclude from the operation of legislation passed to give effect to the Convention on the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the territories of Papua and New-Guinea; b) the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the 1st paragraph of that Article.

### Switzerland

...Conformément à l'alinéa 2 du Protocole de signature, les Autorités fédérales se réservent de donner effet à cet acte international en introduisant dans la législation suisse les règles adoptées par la Convention sous une forme appropriée à cette législation.

### United Kingdom

...I Declare that His Britannic Majesty's Government adopt the last reservation in the additional Protocol of the Bills of Lading Convention. I Further Declare that my signature applies only to Great Britain and Northern Ireland. I reserve the right of each of the British Dominions, Colonies, Overseas Possessions and Protectorates, and of each of the territories over which his Britannic Majesty exercises a mandate to accede to this Convention under Article 13. "...In accordance with Article 13 of the above named Convention, I declare that the acceptance of the Convention given by His Britannic Majesty in the instrument of ratification deposited this day extends only to the United Kingdom of Great Britain and Northern Ireland and does not apply to any of His Majesty's Colonies or Protectorates, or territories under suzerainty or mandate.

**United States of America**

...*And whereas*, the Senate of the United States of America by their resolution of April 1 (legislative day March 13), 1935 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said convention and protocol of signature thereto, 'with the understanding, to be made a part of such ratification, that, not withstanding the provisions of Article 4, Section 5, and the first paragraph of Article 9 of the convention, neither the carrier nor the ship shall in any event be or become liable within the jurisdiction of the United States of America for any loss or damage to or in connection with goods in an amount exceeding 500.00 dollars, lawful money of the United States of America, per package or unit unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

*And whereas*, the Senate of the United States of America by their resolution of May 6, 1937 (two-thirds of the Senators present concurring therein), did add to and make a part of their aforesaid resolution of April 1, 1935, the following understanding: That should any conflict arise between the provisions of the Convention and the provisions of the Act of April 16, 1936, known as the 'Carriage of Goods by Sea Act', the provisions of said Act shall prevail:

*Now therefore*, be it known that I, Franklin D. Roosevelt, President of the United States of America, having seen and considered the said convention and protocol of signature, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof, subject to the two understandings hereinabove recited and made part of this ratification.

**Protocole portant modification de  
la Convention Internationale pour  
l'unification de certaines  
règles en matière de  
connaissance, signée à Bruxelles  
le 25 août 1924  
Règles de Visby**

Bruxelles, 23 février 1968  
Entrée en vigueur: 23 juin 1977

**Protocol to amend the  
International Convention for  
the unification of certain  
rules of law relating to  
bills of lading, signed at Brussels  
on 25 August 1924  
Visby Rules**

Brussels, 23<sup>rd</sup> February 1968  
Entered into force: 23 June, 1977

<b>Belgium</b>	<b>(r)</b>	6.IX.1978
<b>China</b>		
<b>Hong Kong<sup>(1)</sup></b>	<b>(r)</b>	1.XI.1980
<b>Croatia</b>	<b>(a)</b>	28.X.1998
<b>Denmark</b>	<b>(r)</b>	20.XI.1975

<sup>(1)</sup> With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Visby Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 3 of the Protocol.

<b>Ecuador</b>	<b>(a)</b>	23.III.1977
<b>Egypt*</b>	<b>(r)</b>	31.I.1983
<b>Finland</b>	<b>(r)</b>	1.XII.1984
<b>France</b>	<b>(r)</b>	10.III.1977
<b>Georgia</b>	<b>(a)</b>	20.II.1996
<b>Germany</b>	<b>(a)</b>	14.II.1979
<b>Greece</b>	<b>(a)</b>	23.III.1993
<b>Italy</b>	<b>(r)</b>	22.VIII.1985
<b>Latvia</b>	<b>(a)</b>	4.IV.2002
<b>Lebanon</b>	<b>(a)</b>	19.VII.1975
<b>Lithuania</b>	<b>(a)</b>	2.XII.2003
<b>Luxembourg</b>	<b>(a)</b>	18.II.1991
<b>Netherlands*</b>	<b>(r)</b>	26.IV.1982
<b>Norway</b>	<b>(r)</b>	19.III.1974
<b>Poland*</b>	<b>(r)</b>	12.II.1980
<b>Russian Federation</b>	<b>(a)</b>	29.IV.1999
<b>Singapore</b>	<b>(a)</b>	25.IV.1972
<b>Sri-Lanka</b>	<b>(a)</b>	21.X.1981
<b>Sweden</b>	<b>(r)</b>	9.XII.1974
<b>Switzerland</b>	<b>(r)</b>	11.XII.1975
<b>Syrian Arab Republic</b>	<b>(a)</b>	1.VIII.1974
<b>Tonga</b>	<b>(a)</b>	13.VI.1978
<b>United Kingdom of Great Britain</b>	<b>(r)</b>	1.X.1976
<b>Bermuda</b>	<b>(a)</b>	1.XI.1980
<b>Gibraltar</b>	<b>(a)</b>	22.IX.1977
<b>Isle of Man</b>	<b>(a)</b>	1.X.1976
<b>British Antarctic Territories, Caimans, Caicos &amp; Turks Islands, Falklands Islands &amp; Dependencies, Montserrat, Virgin Islands (extension)</b>	<b>(a)</b>	20.X.1983

### Reservations

#### **Egypt Arab Republic**

La République Arabe d’Egypte déclare dans son instrument de ratification qu’elle ne se considère pas liée par l’article 8 dudit Protocole (cette déclaration est faite en vertu de l’article 9 du Protocole).

#### **Netherlands**

Ratification effectuée pour le Royaume en Europe. Le Gouvernement du Royaume des Pays-Bas se réserve le droit, par prescription légale, de préciser que dans les cas prévus par l’article 4, alinéa 2 de c) à p) de la Convention, le porteur du connaissance peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par le paragraphe a).

#### **Poland**

Confirmation des réserves faites lors de la signature, à savoir: “La République Populaire de Pologne ne se considère pas liée par l’article 8 du présent Protocole”.



*Protocole DTS**SDR Protocol*

**Protocole portant modification  
de la Convention Internationale  
pour l'unification de certaines  
règles en matière de  
connaissance  
telle qu'amendée par le  
Protocole de modification du  
23 février 1968.  
Protocole DTS**

Bruxelles, le 21 décembre 1979  
Entrée en vigueur: 14 février 1984

**Protocol to amend the  
International Convention  
for the unification of  
certain rules relating to  
bills of lading  
as modified by the  
Amending Protocol of  
23rd February 1968.  
SDR Protocol**

Brussels, 21<sup>st</sup> December 1979  
Entered into force: 14 February 1984

<b>Australia</b>	<b>(a)</b>	16.VII.1993
<b>Belgium</b>	<b>(r)</b>	7.IX.1983
<b>China</b>		
<b>Hong Kong<sup>(1)</sup></b>	<b>(a)</b>	20.X.1983
<b>Croatia</b>	<b>(a)</b>	28.X.1998
<b>Denmark</b>	<b>(a)</b>	3.XI.1983
<b>Finland</b>	<b>(r)</b>	1.XII.1984
<b>France</b>	<b>(r)</b>	18.XI.1986
<b>Georgia</b>	<b>(a)</b>	20.II.1996
<b>Greece</b>	<b>(a)</b>	23.III.1993
<b>Italy</b>	<b>(r)</b>	22.VIII.1985
<b>Japan</b>	<b>(r)</b>	1.III.1993
<b>Latvia</b>	<b>(a)</b>	4.IV.2002
<b>Lithuania</b>	<b>(a)</b>	2.XII.2003
<b>Luxembourg</b>	<b>(a)</b>	18.II.1991
<b>Mexico</b>	<b>(a)</b>	20.V.1994
<b>Netherlands</b>	<b>(r)</b>	18.II.1986
<b>New Zealand</b>	<b>(a)</b>	20.XII.1994
<b>Norway</b>	<b>(r)</b>	1.XII.1983
<b>Poland*</b>	<b>(r)</b>	6.VII.1984
<b>Russian Federation</b>	<b>(a)</b>	29.IV.1999
<b>Spain</b>	<b>(r)</b>	6.I.1982
<i>(denunciation*)</i>		
<b>Sweden</b>	<b>(r)</b>	14.XI.1983
<b>Switzerland*</b>	<b>(r)</b>	20.I.1988
<b>United Kingdom of Great-Britain and Northern Ireland</b>	<b>(r)</b>	2.III.1982

<sup>(1)</sup> With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the SDR Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 8 of the Protocol.

\* Cette dénonciation s'est effectuée conformément à l'article 15 de la Convention. Tenant compte de l'article 89 de la convention des Nations Unies du 11 décembre 2008 sur le contrat de transport effectué entièrement ou partiellement par mer (ratifiée par le Royaume d'Espagne en date du 19 janvier 2011), la dénonciation de la Convention internationale prendra effet à la date à laquelle la Convention des Nations Unies entrera en vigueur à l'égard du Royaume d'Espagne.

**Bermuda, British Antarctic Territories,  
Virgin Islands, Caimans, Falkland  
Islands & Dependencies, Gibraltar,  
Isle of Man, Montserrat, Caicos &  
Turks Island (extension)**

(a)

20.X.1983

### Reservations

#### Poland

Poland does not consider itself bound by art. III.

#### Switzerland

Le Conseil fédéral suisse déclare, en se référant à l'article 4, paragraphe 5, alinéa d) de la Convention internationale du 25 août 1924 pour l'unification de certaines règles en matière de connaissance, telle qu'amendée par le Protocole de modification du 23 février 1968, remplacé par l'article II du Protocole du 21 décembre 1979, que la Suisse calcule de la manière suivante la valeur, en droit de tirage spécial (DTS), de sa monnaie nationale:

La Banque nationale suisse (BNS) communique chaque jour au Fonds monétaire international (FMI) le cours moyen du dollar des Etats Unis d'Amérique sur le marché des changes de Zürich. La contrevaletur en francs suisses d'un DTS est déterminée d'après ce cours du dollar et le cours en dollars DTS, calculé par le FMI. Se fondant sur ces valeurs, la BNS calcule un cours moyen du DTS qu'elle publiera dans son Bulletin mensuel.

**Convention internationale pour  
l'unification de certaines  
règles relatives aux  
Privilèges et hypothèques  
maritimes  
et protocole de signature**

Bruxelles, 10 avril 1926  
entrée en vigueur: 2 juin 1931

**International convention  
for the unification of  
certain rules relating to  
Maritime liens and  
mortgages  
and protocol of signature**

Brussels, 10<sup>th</sup> April 1926  
entered into force: 2 June 1931

(Translation)

<b>Algeria</b>	(a)	13.IV.1964
<b>Argentina</b>	(a)	19.IV.1961
<b>Belgium</b>	(r)	2.VI.1930
<b>Brazil</b>	(r)	28.IV.1931
<b>Cuba*</b>	(a)	21.XI.1983
<b>Denmark</b>	(r)	
(denunciation – 1.III.1965)		
<b>Estonia</b>	(r)	2.VI.1930
(denunciation – 10.I.2000)		
<b>Finland</b>	(a)	12.VII.1934
(denunciation – 1.III.1965)		
<b>France</b>	(r)	23.VIII.1935
<b>Haiti</b>	(a)	19.III.1965

*Privilèges et hypothèques 1926**Maritime liens and mortgages 1926*

<b>Hungary</b>	<b>(r)</b>	2.VI.1930
<b>Iran</b>	<b>(a)</b>	8.IX.1966
<b>Italy*</b>	<b>(r)</b>	7.XII.1949
<b>Lebanon</b>	<b>(a)</b>	18.III.1969
<b>Luxembourg</b>	<b>(a)</b>	18.II.1991
<b>Madagascar</b>	<b>(r)</b>	23.VIII.1935
<b>Monaco</b>	<b>(a)</b>	15.V.1931
<b>Norway</b>	<b>(r)</b>	10.X.1933
<i>(denunciation – 1.III.1965)</i>		
<b>Poland</b>	<b>(r)</b>	26.X.1936
<i>(denunciation – 16.VII.1976)</i>		
<b>Portugal</b>	<b>(a)</b>	24.XII.1931
<b>Romania</b>	<b>(r)</b>	4.VIII.1937
<b>Spain</b>	<b>(r)</b>	2.VI.1930
<i>(denunciation – 27.V.2004)</i>		
<b>Switzerland</b>	<b>(a)</b>	28.V.1954
<b>Sweden</b>	<b>(r)</b>	1.VII.1938
<i>(denunciation – 1.III.1965)</i>		
<b>Syrian Arab Republic</b>	<b>(a)</b>	14.II.1951
<b>Turkey</b>	<b>(a)</b>	4.VII.1955
<b>Uruguay</b>	<b>(a)</b>	15.IX.1970
<b>Zaire</b>	<b>(a)</b>	17.VII.1967

**Reservations****Cuba**

*(Traduction)* L'instrument d'adhésion contient une déclaration relative à l'article 19 de la Convention.

**Italy**

*(Traduction)* L'Etat italien se réserve la faculté de ne pas conformer son droit interne à la susdite Convention sur les points où ce droit établit actuellement:

- l'extension des privilèges dont question à l'art. 2 de la Convention, également aux dépendances du navire, au lieu qu'aux seuls accessoires tels qu'ils sont indiqués à l'art. 4;
- la prise de rang, après la seconde catégorie de privilèges prévus par l'art. 2 de la Convention, des privilèges qui couvrent les créances pour les sommes avancées par l'Administration de la Marine Marchande ou de la Navigation intérieure, ou bien par l'Autorité consulaire, pour l'entretien et le rapatriement des membres de l'équipage.

**Convention internationale pour  
l'unification de certaines règles  
concernant les  
Immunités des navires  
d'Etat**

Bruxelles, 10 avril 1926  
et protocole additionnel

Bruxelles, 24 mai 1934  
Entrée en vigueur: 8 janvier 1937

**International convention for the  
unification of certain rules  
concerning the  
Immunity of State-owned  
ships**

Brussels, 10<sup>th</sup> April 1926  
and additional protocol

Brussels, May 24<sup>th</sup> 1934  
Entered into force: 8 January 1937

*(Translation)*

<b>Argentina</b>	<b>(a)</b>	19.IV.1961
<b>Belgium</b>	<b>(r)</b>	8.I.1936
<b>Brazil</b>	<b>(r)</b>	8.I.1936
<b>Chile</b>	<b>(r)</b>	8.I.1936
<b>Cyprus</b>	<b>(a)</b>	19.VII.1988
<b>Denmark</b>	<b>(r)</b>	16.XI.1950
<b>Estonia</b>	<b>(r)</b>	8.I.1936
<b>France</b>	<b>(r)</b>	27.VII.1955
<b>Germany</b>	<b>(r)</b>	27.VI.1936
<b>Greece</b>	<b>(a)</b>	19.V.1951
<b>Hungary</b>	<b>(r)</b>	8.I.1936
<b>Italy</b>	<b>(r)</b>	27.I.1937
<b>Luxembourg</b>	<b>(a)</b>	18.II.1991
<b>Libyan Arab Jamahiriya</b>	<b>(r)</b>	27.I.1937
<b>Madagascar</b>	<b>(r)</b>	27.I.1955
<b>Netherlands</b>	<b>(r)</b>	8.VII.1936
<b>Curaçao, Dutch Indies</b>		
<b>Norway</b>	<b>(r)</b>	25.IV.1939
<b>Poland</b>	<b>(r)</b>	16.VII.1976
<b>Portugal</b>	<b>(r)</b>	27.VI.1938
<b>Romania</b>	<b>(r)</b>	4.VIII.1937
<i>(denunciation – 21.IX.1959)</i>		
<b>Somalia</b>	<b>(r)</b>	27.I.1937
<b>Sweden</b>	<b>(r)</b>	1.VII.1938
<b>Switzerland</b>	<b>(a)</b>	28.V.1954
<b>Suriname</b>	<b>(r)</b>	8.VII.1936
<b>Syrian Arab Republic</b>	<b>(a)</b>	17.II.1960
<b>Turkey</b>	<b>(a)</b>	4.VII.1955
<b>United Arab Republic</b>	<b>(a)</b>	17.II.1960
<b>United Kingdom*</b>	<b>(r)</b>	3.VII.1979
<b>United Kingdom for Jersey, Guernsey and Island of Man</b>	<b>(a)</b>	19.XI.1987
<b>Uruguay</b>	<b>(a)</b>	15.IX.1970
<b>Zaire</b>	<b>(a)</b>	17.VII.1967

## Reservations

### United Kingdom

We reserve the right to apply Article 1 of the Convention to any claim in respect of a ship which falls within the Admiralty jurisdiction of Our courts, or of Our courts in any territory in respect of which We are party to the Convention. We reserve the right, with respect to Article 2 of the Convention to apply in proceedings concerning another High Contracting Party or ship of another High Contracting Party the rules of procedure set out in Chapter II of the European Convention on State Immunity, signed at Basle on the Sixteenth day of May, in the Year of Our Lord One thousand Nine hundred and Seventy-two.

In order to give effect to the terms of any international agreement with a non-Contracting State, We reserve the right to make special provision:

(a) as regards the delay or arrest of a ship or cargo belonging to such a State, and (b) to prohibit seizure of or execution against such a ship or cargo.

**Convention internationale pour  
l'unification de certaines règles  
relatives à la  
Compétence civile  
en matière d'abordage**

Bruxelles, 10 mai 1952

Entrée en vigueur:

14 septembre 1955

**International convention for the  
unification of certain rules  
relating to  
Civil jurisdiction  
in matters of collision**

Brussels, 10<sup>th</sup> May 1952

Entered into force:

14 September 1955

<b>Algeria</b>	(a)	18.VIII.1964
<b>Antigua and Barbuda</b>	(a)	12.V.1965
<b>Argentina</b>	(a)	19.IV.1961
<b>Bahamas</b>	(a)	12.V.1965
<b>Belgium</b>	(r)	10.IV.1961
<b>Belize</b>	(a)	21.IX.1965
<b>Benin</b>	(a)	23.IV.1958
<b>Burkina Faso</b>	(a)	23.IV.1958
<b>Cameroon</b>	(a)	23.IV.1958
<b>Central African Republic</b>	(a)	23.IV.1958
<b>China</b>		
<b>Hong Kong<sup>(1)</sup></b>	(a)	29.III.1963
<b>Macao<sup>(2)</sup></b>	(a)	23.III.1999

<sup>(1)</sup> With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

<sup>(2)</sup> The extension of the Convention to the territory of Macao has been notified by Portugal with declaration deposited on 23 March 1999.

With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

<b>Comoros</b>	(a)	23.IV.1958
<b>Congo</b>	(a)	23.IV.1958
<b>Costa Rica*</b>	(a)	13.VII.1955
<b>Cote d'Ivoire</b>	(a)	23.IV.1958
<b>Croatia*</b>	(r)	8.X.1991
<b>Cyprus</b>	(a)	17.III.1994
<b>Djibouti</b>	(a)	23.IV.1958
<b>Dominican Republic</b>	(a)	12.V.1965
<b>Egypt</b>	(r)	24.VIII.1955
<b>Fiji</b>	(a)	29.III.1963
<b>France</b>	(r)	25.V.1957
<b>Gabon</b>	(a)	23.IV.1958
<b>Germany</b>	(r)	6.X.1972
<b>Greece</b>	(r)	15.III.1965
<b>Grenada</b>	(a)	12.V.1965
<b>Guinea</b>	(a)	23.IV.1958
<b>Guyana</b>	(a)	29.III.1963
<b>Haute Volta</b>	(a)	23.IV.1958
<b>Holy Seat</b>	(r)	10.VIII.1956
<b>Ireland</b>	(a)	17.X.1989
<b>Italy</b>	(r)	9.XI.1979
<b>Khmere Republic*</b>	(a)	12.XI.1959
<b>Kiribati</b>	(a)	21.IX.1965
<b>Luxembourg</b>	(a)	18.II.1991
<b>Madagascar</b>	(a)	23.IV.1958
<b>Mauritania</b>	(a)	23.IV.1958
<b>Mauritius</b>	(a)	29.III.1963
<b>Morocco</b>	(a)	11.VII.1990
<b>Niger</b>	(a)	23.IV.1958
<b>Nigeria</b>	(a)	7.XI.1963
<b>North Borneo</b>	(a)	29.III.1963
<b>Paraguay</b>	(a)	22.XI.1967
<b>Poland</b>	(a)	14.III.1986
<b>Portugal</b>	(r)	4.V.1957
<b>Romania</b>	(a)	28.XI.1995
<b>Sarawak</b>	(a)	29.VIII.1962
<b>Senegal</b>	(a)	23.IV.1958
<b>Seychelles</b>	(a)	29.III.1963
<b>Slovenia</b>	(a)	13.X.1993
<b>Solomon Islands</b>	(a)	21.IX.1965
<b>Spain</b>	(r)	8.XII.1953
<b>St. Kitts and Nevis</b>	(a)	12.V.1965
<b>St. Lucia</b>	(a)	12.V.1965
<b>St. Vincent and the Grenadines</b>	(a)	12.V.1965
<b>Sudan</b>	(a)	23.IV.1958
<b>Switzerland</b>	(a)	28.V.1954
<b>Syrian Arab Republic</b>	(a)	1.VIII.1974
<b>Tchad</b>	(a)	23.IV.1958
<b>Togo</b>	(a)	23.IV.1958
<b>Tonga</b>	(a)	13.VI.1978
<b>Tuvalu</b>	(a)	21.IX.1965

**United Kingdom of Great Britain and**

<b>Northern Ireland</b>	<b>(r)</b>	18.III.1959
<b>Gibraltar</b>	<b>(a)</b>	29.III.1963
<b>British Virgin Islands</b>	<b>(a)</b>	29.V.1963
<b>Bermuda</b>	<b>(a)</b>	30.V.1963
<b>Caiman Islands, Montserrat</b>	<b>(a)</b>	12.V.1965
<b>Anguilla, St. Helena</b>	<b>(a)</b>	12.V.1965
<b>Turks Isles and Caicos</b>	<b>(a)</b>	21.IX.1965
<b>Guernsey</b>	<b>(a)</b>	8.XII.1966
<b>Falkland Islands and Dependencies</b>	<b>(a)</b>	17.X.1969
<b>Zaire</b>	<b>(a)</b>	17.VII.1967

**Reservations****Costa-Rica**

*(Traduction)* Le Gouvernement de la République du Costa Rica, en adhérant à cette Convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon.

En conséquence, la République du Costa Rica ne reconnaît pas comme obligatoires les literas b) et c) du premier paragraphe de l'article premier."

"Conformément au Code du droit international privé approuvé par la sixième Conférence internationale américaine, qui s'est tenue à La Havane (Cuba), le Gouvernement de la République du Costa Rica, en acceptant cette Convention, fait cette réserve expresse que, en aucun cas, il ne renoncera à sa compétence ou juridiction pour appliquer la loi costaricienne en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire costaricien.

**Croatia**

Reservation made by Yugoslavia and now applicable to Croatia: "Le Gouvernement de la République Populaire Fédérative de Yougoslavie se réserve le droit de se déclarer au moment de la ratification sur le principe de "sistership" prévu à l'article 1° lettre (b) de cette Convention.

**Khmere Republic**

Le Gouvernement de la République Khmère, en adhérant à ladite convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon.

En conséquence, le Gouvernement de la République Khmère ne reconnaît pas le caractère obligatoire des alinéas b) et c) du paragraphe 1° de l'article 1°.

En acceptant ladite convention, le Gouvernement de la République Khmère fait cette réserve expresse que, en aucun cas, elle ne renoncera à sa compétence ou juridiction pour appliquer la loi khmère en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire khmère.

**Convention internationale  
pour l'unification de  
certaines règles  
relatives à la**

**Compétence pénale  
en matière d'abordage et  
autres événements  
de navigation**

Bruxelles, 10 mai 1952  
Entrée en vigueur:  
20 novembre 1955

**International convention  
for the unification of  
certain rules  
relating to**

**Penal jurisdiction  
in matters of collision  
and other incidents  
of navigation**

Brussels, 10<sup>th</sup> May 1952  
Entered into force:  
20 November 1955

**Antigua and Barbuda\***

**Argentina\***

**Bahamas\***

**Belgium\***

**Belize\***

**Benin**

**Burkina Faso**

**Burman Union\***

**Cayman Islands\***

**Cameroon**

**Central African Republic**

**China**

**(a)** 12.V.1965

**(a)** 19.IV.1961

**(a)** 12.V.1965

**(r)** 10.IV.1961

**(a)** 21.IX.1965

**(a)** 23.IV.1958

**(a)** 23.IV.1958

**(a)** 8.VII.1953

**(a)** 12.VI.1965

**(a)** 23.IV.1958

**(a)** 23.IV.1958

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Penal Jurisdiction Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

The following declarations have been made by the Government of the People's Republic of China:

1. The Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right not to observe the provisions of Article 1 of the Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ships to which that ship belongs consented to the institution of criminal or disciplinary proceedings before the judicial or administrative authorities of the Hong Kong Special Administrative Region.

2. In accordance with Article 4 of the Convention, the Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right to take proceedings in respect of offences committed within the waters under the jurisdiction of the Hong Kong Special Administrative Region.

(2) The extension of the Convention to the territory of Macao has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.



*Compétence pénale 1952**Penal jurisdiction 1952*

<b>Hong Kong<sup>(1)</sup></b>	<b>(a)</b>	29.III.1963
<b>Macao<sup>(2)</sup></b>	<b>(a)</b>	23.III.1999
<b>Comoros</b>	<b>(a)</b>	23.IV.1958
<b>Congo</b>	<b>(a)</b>	23.IV.1958
<b>Costa Rica*</b>	<b>(a)</b>	13.VII.1955
<b>Croatia*</b>	<b>(a)</b>	30.VII.1992
<b>Cyprus</b>	<b>(a)</b>	17.III.1994
<b>Djibouti</b>	<b>(a)</b>	23.IV.1958
<b>Dominica, Republic of*</b>	<b>(a)</b>	12.V.1965
<b>Egypt*</b>	<b>(r)</b>	24.VIII.1955
<b>Fiji*</b>	<b>(a)</b>	29.III.1963
<b>France*</b>	<b>(r)</b>	20.V.1955
<b>Overseas Territories</b>	<b>(a)</b>	23.IV.1958
<b>Gabon</b>	<b>(a)</b>	23.IV.1958
<b>Germany*</b>	<b>(r)</b>	6.X.1972
<b>Greece</b>	<b>(r)</b>	15.III.1965
<b>Grenada*</b>	<b>(a)</b>	12.V.1965
<b>Guyana*</b>	<b>(a)</b>	29.III.1963
<b>Guinea</b>	<b>(a)</b>	23.IV.1958
<b>Haiti</b>	<b>(a)</b>	17.IX.1954
<b>Haute-Volta</b>	<b>(a)</b>	23.IV.1958
<b>Holy Seat</b>	<b>(r)</b>	10.VIII.1956
<b>Italy*</b>	<b>(r)</b>	9.XI.1979
<b>Ivory Coast</b>	<b>(a)</b>	23.IV.1958
<b>Khmere Republic*</b>	<b>(a)</b>	12.XI.1956
<b>Kiribati*</b>	<b>(a)</b>	21.IX.1965
<b>Lebanon</b>	<b>(r)</b>	19.VII.1975
<b>Luxembourg</b>	<b>(a)</b>	18.II.1991
<b>Madagascar</b>	<b>(a)</b>	23.IV.1958
<b>Mauritania</b>	<b>(a)</b>	23.IV.1958
<b>Mauritius*</b>	<b>(a)</b>	29.III.1963
<b>Montserrat*</b>	<b>(a)</b>	12.V.1965
<b>Morocco</b>	<b>(a)</b>	11.VII.1990
<b>Netherlands*</b>	<b>(r)</b>	
<b>Kingdom in Europe, West Indies and Aruba</b>	<b>(r)</b>	25.VI.1971
<b>Niger</b>	<b>(a)</b>	23.IV.1958
<b>Nigeria*</b>	<b>(a)</b>	7 XI.1963
<b>North Borneo*</b>	<b>(a)</b>	29.III.1963
<b>Paraguay</b>	<b>(a)</b>	22.XI.1967
<b>Portugal*</b>	<b>(r)</b>	4.V.1957
<b>Romania</b>	<b>(a)</b>	28.XI.1995
<b>Sarawak*</b>	<b>(a)</b>	28.VIII.1962
<b>Senegal</b>	<b>(a)</b>	23.IV.1958
<b>Seychelles*</b>	<b>(a)</b>	29.III.1963
<b>Slovenia</b>	<b>(a)</b>	13.X.1993
<b>Solomon Islands*</b>	<b>(a)</b>	21.IX.1965
<b>Spain*</b>	<b>(r)</b>	8.XII.1953
<b>St. Kitts and Nevis*</b>	<b>(a)</b>	12.V.1965
<b>St. Lucia*</b>	<b>(a)</b>	12.V.1965
<b>St. Helena*</b>	<b>(a)</b>	12.V.1965

<b>St. Vincent and the Grenadines*</b>	<b>(a)</b>	12.V.1965
<b>Sudan</b>	<b>(a)</b>	23.IV.1958
<b>Suriname</b>	<b>(r)</b>	25.VI.1971
<b>Switzerland</b>	<b>(a)</b>	28.V.1954
<b>Syrian Arab Republic</b>	<b>(a)</b>	10.VII.1972
<b>Tchad</b>	<b>(a)</b>	23.IV.1958
<b>Togo</b>	<b>(a)</b>	23.IV.1958
<b>Tonga*</b>	<b>(a)</b>	13.VI.1978
<b>Tuvalu*</b>	<b>(a)</b>	21.IX.1965
<b>United Kingdom of Great Britain and Northern Ireland*</b>	<b>(r)</b>	18.III.1959
<b>Gibraltar</b>	<b>(a)</b>	29.III.1963
<b>British Virgin Islands</b>	<b>(a)</b>	29.V.1963
<b>Bermuda</b>	<b>(a)</b>	30.V.1963
<b>Anguilla</b>	<b>(a)</b>	12.V.1965
<b>Turks Islands and Caicos</b>	<b>(a)</b>	21.IX.1965
<b>Guernsey</b>	<b>(a)</b>	8.XII.1966
<b>Falkland Islands and dependencies</b>	<b>(a)</b>	17.X.1969
<b>Isle of Man</b>	<b>(a)</b>	14.IV.1993
<b>Viet Nam*</b>	<b>(a)</b>	26.XI.1955
<b>Zaire</b>	<b>(a)</b>	17.VII.1967

### Reservations

#### **Antigua, Cayman Island, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent**

The Governments of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla (now the independent State of Anguilla), St. Helena and St. Vincent reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs assented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent. They reserve the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent.

#### **Argentina**

*(Traduction)* La République Argentine adhère à la Convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage et autres événements de navigation, sous réserve expresse du droit accordé par la seconde partie de l'article 4, et il est fixé que dans le terme "infractions" auquel cet article se réfère, se trouvent inclus les abordages et tout autre événement de la navigation visés à l'article 1<sup>o</sup> de la Convention.

#### **Bahamas**

...Subject to the following reservations:

- (a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of the Bahamas;
- (b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of the Bahamas.

**Belgium**

...le Gouvernement belge, faisant usage de la faculté inscrite à l'article 4 de cette Convention, se réserve le droit de poursuivre les infractions commises dans les eaux territoriales belges.

**Belize**

...Subject to the following reservations:

- (a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, consented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Belize;
- (b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Belize.

**Cayman Islands**

*See Antigua.*

**China**

*Macao*

The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right not to observe the provisions of Article 1 of the Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ships to which that ship belongs consented to the institution of criminal or disciplinary proceedings before the judicial or administrative authorities of the Macao Special Administrative Region.

In accordance with Article 4 of the Convention, the Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to take proceedings in respect of offences committed within the waters under the jurisdiction of the Macao Special Administrative Region.

Within the above ambit, the Government of the People's Republic of China will assume the responsibility for the international rights and obligations that place on a Party to the Convention

**Costa-Rica**

*(Traduction)* Le Gouvernement de Costa-Rica ne reconnaît pas le caractère obligatoire des articles 1° et 2° de la présente Convention.

**Croatia**

Reservation made by Yugoslavia and now applicable to Croatia: "Sous réserve de ratifications ultérieure et acceptant la réserve prévue à l'article 4 de cette Convention. Conformément à l'article 4 de ladite Convention, le Gouvernement yougoslave se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales".

**Dominica, Republic of**

... Subject to the following reservations:

- (a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Dominica;
- (b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Dominica.

**Egypt**

Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler la réserve prévue à l'article 4, alinéa 2. Confirmation expresse de la réserve faite au moment de la signature.

**Fiji**

The Government of Fiji reserves the right not to observe the provisions of article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respect that ship or any class of ship to which that ship belongs consented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Fiji. The Government of Fiji reserves the right under article 4 of this Convention to take proceedings in respect of offences committed within the territorial water of Fiji.

**France**

Au nom du Gouvernement de la République Française je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de la convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage.

**Germany, Federal Republic of**

(Traduction) Sous réserve du prescrit de l'article 4, alinéa 2.

**Grenada**

*Same reservations as the Republic of Dominica*

**Guyana**

*Same reservations as the Republic of Dominica*

**Italy**

Le Gouvernement de la République d'Italie se réfère à l'article 4, paragraphe 2, et se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

**Khmere Republic**

Le Gouvernement de la République Khmère, d'accord avec l'article 4 de ladite convention, se réservera le droit de poursuivre les infractions commises dans ses eaux territoriales.

**Kiribati**

*Same reservations as the Republic of Dominica*

**Mauritius**

*Same reservations as the Republic of Dominica*

**Montserrat**

*See Antigua.*

**Netherlands**

Conformément à l'article 4 de cette Convention, le Gouvernement du Royaume des Pays-Bas, se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

**Nigeria**

The Government of the Federal Republic of Nigeria reserve the right not to implement the provisions of Article 1 of the Convention in any case where that Government has an agreement with any other State that is applicable to a particular collision or other incident of navigation and if such agreement is inconsistent with the provisions of the said Article 1. The Government of the Federal Republic of Nigeria reserves the right, in accordance with Article 4 of the Convention, to take proceedings in respect of offences committed within the territorial waters of the Federal Republic of Nigeria.

**North Borneo**

*Same reservations as the Republic of Dominica*

**Portugal**

Au nom du Gouvernement portugais, je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de cette Convention.

**Sarawak**

*Same reservations as the Republic of Dominica*

**St. Helena**

*See Antigua.*

**St. Kitts-Nevis**

*See Antigua.*

**St. Lucia**

*Same reservations as the Republic of Dominica*

**St. Vincent**

*See Antigua.*

**Seychelles**

*Same reservations as the Republic of Dominica*

**Solomon Isles**

*Same reservations as the Republic of Dominica*

**Spain**

La Délégation espagnole désire, d'accord avec l'article 4 de la Convention sur la compétence pénale en matière d'abordage, se réserver le droit au nom de son Gouvernement, de poursuivre les infractions commises dans ses eaux territoriales. Confirmation expresse de la réserve faite au moment de la signature.

**Tonga**

*Same reservations as the Republic of Dominica*

**Tuvalu**

*Same reservations as the Republic of Dominica*

**United Kingdom**

1. - Her Majesty's Government in the United Kingdom reserves the right not to apply the provisions of Article 1 of this Convention in any case where there exists between Her Majesty's Government and the Government of any other State an agreement which is applicable to a particular collision or other incident of navigation and is inconsistent with that Article.

2. - Her Majesty's Government in the United Kingdom reserves the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

...subject to the following reservations:

(1) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs consented to the institution of criminal and disciplinary proceedings before the judicial or administrative authorities of the United Kingdom.

(2) In accordance with the provisions of Article 4 of the said Convention, the Government of the United Kingdom of Great Britain and Northern Ireland reserve the right to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

(3) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservation provided for in Article 4 of the said Convention...

#### **Vietnam**

Comme il est prévu à l'article 4 de la même convention, le Gouvernement vietnamien se réserve le droit de poursuivre les infractions commises dans la limite de ses eaux territoriales.

#### **Convention internationale pour l'unification de certaines règles sur la Saisie conservatoire des navires de mer**

Bruxelles, 10 mai 1952  
Entrée en vigueur: 24 février 1956

#### **International convention for the unification of certain rules relating to Arrest of sea-going ships**

Brussels, 10<sup>th</sup> May 1952  
Entered into force: 24 February 1956

<b>Algeria</b>	<b>(a)</b>	18.VIII.1964
<b>Antigua and Barbuda*</b>	<b>(a)</b>	12.V.1965
<b>Bahamas*</b>	<b>(a)</b>	12.V.1965
<b>Belgium</b>	<b>(r)</b>	10.IV.1961
<b>Belize*</b>	<b>(a)</b>	21.IX.1965
<b>Benin</b>	<b>(a)</b>	23.IV.1958
<b>Burkina Faso</b>	<b>(a)</b>	23.IV.1958
<b>Cameroon</b>	<b>(a)</b>	23.IV.1958
<b>Central African Republic</b>	<b>(a)</b>	23.IV.1958
<b>China</b>		
<b>Hong Kong<sup>(1)</sup></b>	<b>(a)</b>	29.III.1963
<b>Macao<sup>(2)</sup></b>	<b>(a)</b>	23.IX.1999
<b>Comoros</b>	<b>(a)</b>	23.IV.1958
<b>Congo</b>	<b>(a)</b>	23.IV.1958
<b>Costa Rica*</b>	<b>(a)</b>	13.VII.1955

<sup>(1)</sup> With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Arrest Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

<sup>(2)</sup> The extension of the Convention to the territory of Macao as from 23 September 1999 has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Saisie des navires 1952**Arrest of ships 1952*

<b>Côte d'Ivoire</b>	<b>(a)</b>	23.IV.1958
<b>Croatia*</b>	<b>(r)</b>	30.VII.1992
<b>Cuba*</b>	<b>(a)</b>	21.XI.1983
<b>Denmark</b>	<b>(r)</b>	2.V.1989
<b>Djibouti</b>	<b>(a)</b>	23.IV.1958
<b>Dominica, Republic of*</b>	<b>(a)</b>	12.V.1965
<b>Egypt*</b>	<b>(r)</b>	24.VIII.1955
<b>Fiji</b>	<b>(a)</b>	29.III.1963
<b>Finland</b>	<b>(r)</b>	21.XII.1995
<b>France</b>	<b>(r)</b>	25.V.1957
<b>France (Overseas Territories)</b>		
Archipel des îles Marquises,		
Archipel des Tuamotu et des Gambier,		
Iles Australes, Iles sous le Vent, Iles		
Saint-Pierre et Miquelon, Iles Wallis et		
Futuna, Nouvelle-Calédonie et dépendances,		
Tahiti et dépendances, Terres australes		
et antarctiques françaises	<b>(a)</b>	23.IV.1958
<b>Overseas Territories</b>	<b>(a)</b>	23.IV.1958
<b>Gabon</b>	<b>(a)</b>	23.IV.1958
<b>Germany*</b>	<b>(r)</b>	6.X.1972
<b>Greece</b>	<b>(r)</b>	27.II.1967
<b>Grenada*</b>	<b>(a)</b>	12.V.1965
<b>Guyana*</b>	<b>(a)</b>	29.III.1963
<b>Guinea</b>	<b>(a)</b>	23.IV.1958
<b>Haiti</b>	<b>(a)</b>	4.XI.1954
<b>Haute-Volta</b>	<b>(a)</b>	23.IV.1958
<b>Holy Seat</b>	<b>(r)</b>	10.VIII.1956
<b>Ireland*</b>	<b>(a)</b>	17.X.1989
<b>Italy*</b>	<b>(r)</b>	9.XI.1979
<b>Khmere Republic*</b>	<b>(a)</b>	12.XI.1956
<b>Kiribati*</b>	<b>(a)</b>	21.IX.1965
<b>Latvia</b>	<b>(a)</b>	17.V.1993
<b>Lithuania</b>	<b>(a)</b>	29.IV.2002
<b>Luxembourg</b>	<b>(a)</b>	18.II.1991
<b>Madagascar</b>	<b>(a)</b>	23.IV.1958
<b>Mali</b>	<b>(a)</b>	23.IV.1958
<b>Morocco</b>	<b>(a)</b>	11.VII.1990
<b>Mauritania</b>	<b>(a)</b>	23.IV.1958
<b>Mauritius*</b>	<b>(a)</b>	29.III.1963
<b>Namibia</b>	<b>(a)</b>	14.III.2002
<b>Netherlands*</b>	<b>(r)</b>	20.I.1983
<b>Niger</b>	<b>(a)</b>	23.IV.1958
<b>Nigeria*</b>	<b>(a)</b>	7.XI.1963
<b>North Borneo*</b>	<b>(a)</b>	29.III.1963
<b>Norway</b>	<b>(r)</b>	1.XI.1994
<b>Paraguay</b>	<b>(a)</b>	22.XI.1967
<b>Poland</b>	<b>(a)</b>	16.VII.1976
<b>Portugal</b>	<b>(r)</b>	4.V.1957
<b>Romania</b>	<b>(a)</b>	28.XI.1995
<b>Russian Federation*</b>	<b>(a)</b>	29.IV.1999

*Saisie des navires 1952**Arrest of ships 1952*

<b>St. Kitts and Nevis*</b>	(a)	12.V.1965
<b>St. Lucia*</b>	(a)	12.V.1965
<b>St. Vincent and the Grenadines*</b>	(a)	12.V.1965
<b>Sarawak*</b>	(a)	28.VIII.1962
<b>Senegal</b>	(a)	23.IV.1958
<b>Seychelles*</b>	(a)	29.III.1963
<b>Slovenia</b>	(a)	13.X.1993
<b>Solomon Islands*</b>	(a)	21.IX.1965
<b>Spain</b>	(r)	8.XII.1953
<i>(denunciation – 28.III.2011)</i>		
<b>Sweden</b>	(a)	30.IV.1993
<b>Switzerland</b>	(a)	28.V.1954
<b>Syrian Arabic Republic</b>	(a)	3.II.1972
<b>Tchad</b>	(a)	23.IV.1958
<b>Togo</b>	(a)	23.IV.1958
<b>Tonga*</b>	(a)	13.VI.1978
<b>Turks Isles and Caicos*</b>	(a)	21.IX.1965
<b>Tuvalu*</b>	(a)	21.IX.1965

**Reservations****Antigua**

... Reserves the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.

**Bahamas**

... With reservation of the right not to apply the provisions of this Convention to warships or to vessels owned by or in service of a State.

**Belize**

*Same reservation as the Bahamas.*

**Costa Rica**

*(Traduction)* Premièrement: le 1er paragraphe de l'article 3 ne pourra pas être invoqué pour saisir un navire auquel la créance ne se rapporte pas et qui n'appartient plus à la personne qui était propriétaire du navire auquel cette créance se rapporte, conformément au registre maritime du pays dont il bat pavillon et bien qu'il lui ait appartenu.

Deuxièmement: que Costa Rica ne reconnaît pas le caractère obligatoire des alinéas a), b), c), d), e) et f) du paragraphe 1er de l'article 7, étant donné que conformément aux lois de la République les seuls tribunaux compétents quant au fond pour connaître des actions relatives aux créances maritimes, sont ceux du domicile du demandeur, sauf s'il s'agit des cas visés sub o), p) et q) à l'alinéa 1er de l'article 1, ou ceux de l'Etat dont le navire bat pavillon.

Le Gouvernement de Costa Rica, en ratifiant ladite Convention, se réserve le droit d'appliquer la législation en matière de commerce et de travail relative à la saisie des navires étrangers qui arrivent dans ses ports.

**Côte d'Ivoire**

Confirmation d'adhésion de la Côte d'Ivoire. Au nom du Gouvernement de la République de Côte d'Ivoire, nous, Ministre des Affaires Etrangères, confirmons que par Succession d'Etat, la République de Côte d'Ivoire est devenue, à la date de son accession à la souveraineté internationale, le 7 août 1960, partie à la Convention internationale pour l'unification de certaines règles sur la saisie conservatoire des navires de mer, signée à



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*Saisie des navires 1952**Arrest of ships 1952*

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Bruxelles le 10 mai 1952, qu'elle l'a été de façon continue depuis lors et que cette Convention est aujourd'hui, toujours en vigueur à l'égard de la Côte d'Ivoire.

**Croatia**

Reservation made by Yugoslavia and now applicable to Croatia: "...en réservant conformément à l'article 10 de ladite Convention, le droit de ne pas appliquer ces dispositions à la saisie d'un navire pratiquée en raison d'une créance maritime visée au point o) de l'article premier et d'appliquer à cette saisie la loi nationale".

**Cuba**

(Traduction) L'instrument d'adhésion contient les réserves prévues à l'article 10 de la Convention celles de ne pas appliquer les dispositions de la Convention aux navires de guerre et aux navires d'Etat ou au service d'un Etat, ainsi qu'une déclaration relative à l'article 18 de la Convention.

**Dominica, Republic of**

*Same reservation as Antigua*

**Egypt**

Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler les réserves prévues à l'article 10.

Confirmation expresse des réserves faites au moment de la signature.

**Germany, Federal Republic of**

(Traduction) ...sous réserve du prescrit de l'article 10, alinéas a et b.

**Grenada**

*Same reservation as Antigua.*

**Guyana**

*Same reservation as the Bahamas.*

**Ireland**

Ireland reserves the right not to apply the provisions of the Convention to warships or to ships owned by or in service of a State.

**Italy**

Le Gouvernement de la République d'Italie se réfère à l'article 10, par. (a) et (b), et se réserve:

(a) le droit de ne pas appliquer les dispositions de la présente Convention à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux o) et p) de l'article premier et d'appliquer à cette saisie sa loi nationale;

(b) le droit de ne pas appliquer les dispositions du premier paragraphe de l'article 3 à la saisie pratiquée sur son territoire en raison des créances prévues à l'alinéa q) de l'article 1.

**Khmere Republic**

Le Gouvernement de la République Khmère en adhérant à cette convention formule les réserves prévues à l'article 10.

**Kiribati**

*Same reservation as the Bahamas.*

**Mauritius**

*Same reservation as Antigua.*

**Netherlands**

Réserves formulées conformément à l'article 10, paragraphes (a) et (b):

- les dispositions de la Convention précitée ne sont pas appliquées à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux alinéas o) et p) de l'article 1, saisie à laquelle s'applique le loi néerlandaise; et
  - les dispositions du premier paragraphe de l'article 3 ne sont pas appliquées à la saisie pratiquée sur le territoire du Royaume des Pays-Bas en raison des créances prévues à l'alinéa q) de l'article 1.
- Cette ratification est valable depuis le 1er janvier 1986 pour le Royaume des Pays-Bas, les Antilles néerlandaises et Aruba.

**Nigeria**

*Same reservation as Antigua.*

**North Borneo**

*Same reservation as Antigua.*

**Russian Federation**

The Russian Federation reserves the right not to apply the rules of the International Convention for the unification of certain rules relating to the arrest of sea-going ships of 10 May 1952 to warships, military logistic ships and to other vessels owned or operated by the State and which are exclusively used for non-commercial purposes.

Pursuant to Article 10, paragraphs (a) and (b), of the International Convention for the unification of certain rules relating to the arrest of sea-going ships, the Russian Federation reserves the right not to apply:

- the rules of the said Convention to the arrest of any ship for any of the claims enumerated in Article 1, paragraph 1, subparagraphs (o) and (p), of the Convention, but to apply the legislation of the Russian Federation to such arrest;
- the first paragraph of Article 3 of the said Convention to the arrest of a ship, within the jurisdiction of the Russian Federation, for claims set out in Article 1, paragraph 1, subparagraph (q), of the Convention.

**St. Kitts and Nevis**

*Same reservation as Antigua.*

**St. Lucia**

*Same reservation as Antigua.*

**St. Vincent and the Grenadines**

*Same reservation as Antigua.*

**Sarawak**

*Same reservation as Antigua.*

**Seychelles**

*Same reservation as the Bahamas.*

**Solomon Islands**

*Same reservation as the Bahamas.*

**Tonga**

*Same reservation as Antigua.*

**Turk Isles and Caicos**

*Same reservation as the Bahamas.*

*Limitation de responsabilité 1957**Limitation of liability 1957***Tuvalu***Same reservation as the Bahamas.***United Kingdom of Great Britain and Northern Ireland**

... Subject to the following reservations:

1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

**United Kingdom (Overseas Territories): Anguilla, Bermuda, British Virgin Islands, Caiman Islands, Falkland Islands and Dependencies, Gibraltar, Guernsey, Hong Kong, Montserrat, St. Helena, Turks Isles and Caicos**

... Subject to the following reservations:

1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

**Convention internationale  
sur la****Limitation  
de la responsabilité  
des propriétaires  
de navires de mer  
et protocole de signature**

Bruxelles, le 10 octobre 1957  
Entrée en vigueur: 31 mai 1968

**International convention  
relating to the****Limitation  
of the liability  
of owners  
of sea-going ships  
and protocol of signature**

Brussels, 10<sup>th</sup> October 1957  
Entered into force: 31 May 1968

**Algeria****(a)** 18.VIII.1964**Australia****(r)** 30.VII.1975*(denunciation – 30.V.1990)***Bahamas\*****(a)** 21.VIII.1964**Barbados\*****(a)** 4.VIII.1965**Belgium****(r)** 31.VII.1975*(denunciation – 1.IX.1989)***Belize****(r)** 31.VII.1975

*Limitation de responsabilité 1957**Limitation of liability 1957*

<b>China</b>		
<b>Macao<sup>(1)</sup></b>	(a)	20.XII.1999
<b>Denmark*</b>	(r)	1.III.1965
<i>(denunciation – 1.IV.1984)</i>		
<b>Dominica, Republic of*</b>	(a)	4.VIII.1965
<b>Egypt (Arab Republic of)</b>		
<i>(denunciation – 8.V.1985)</i>		
<b>Fiji*</b>	(a)	21.VIII.1964
<b>Finland</b>	(r)	19.VIII.1964
<i>(denunciation – 1.IV.1984)</i>		
<b>France</b>	(r)	7.VII.1959
<i>(denunciation – 15.VII.1987)</i>		
<b>Germany</b>	(r)	6.X.1972
<i>(denunciation – 1.IX.1986)</i>		
<b>Ghana*</b>	(a)	26.VII.1961
<b>Grenada*</b>	(a)	4.VIII.1965
<b>Guyana*</b>	(a)	25.III.1966
<b>Iceland*</b>	(a)	16.X.1968
<i>(denunciation - 5.XI.2008)</i>		
<b>India*</b>	(r)	1.VI.1971
<b>Iran*</b>	(r)	26.IV.1966
<b>Israel*</b>	(r)	30.XI.1967
<b>Japan</b>	(r)	1.III.1976
<i>(denunciation – 19.V.1983)</i>		
<b>Kiribati*</b>	(a)	21.VIII.1964
<b>Lebanon</b>	(a)	23.XII.1994
<b>Luxembourg</b>	(a)	18.II.1991
<i>(denunciation – 29.XI.2009)</i>		
<b>Madagascar</b>	(a)	13.VII.1965
<b>Mauritius*</b>	(a)	21.VIII.1964
<b>Monaco*</b>	(a)	24.I.1977
<b>Netherlands</b>	(r)	10.XII.1965
<i>(denunciation – 1.IX.1989)</i>		
<b>Aruba*</b>	(r)	1.I.1986
<b>Norway</b>	(r)	1.III.1965
<i>(denunciation – 1.IV.1984)</i>		
<b>Papua New Guinea*</b>	(a)	14.III.1980
<b>Poland</b>	(r)	1.XII.1972
<b>Portugal*</b>	(r)	8.IV.1968
<b>St. Lucia*</b>	(a)	4.VIII.1965
<b>St. Vincent and the Grenadines</b>	(a)	4.VIII.1965
<b>Seychelles*</b>	(a)	21.VIII.1964

(1) The extension of the Convention to the territory of Macao as from 23 September 1999 has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Limitation de responsabilité 1957**Limitation of liability 1957*

<b>Singapore*</b> ( <i>denunciation – 22.IV.2005</i> )	(a)	17.IV.1963
<b>Solomon Islands*</b>	(a)	21.VIII.1964
<b>Spain*</b> ( <i>denunciation - 04.I. 2005</i> )	(r)	16.VII.1959
<b>Sweden</b> ( <i>denunciation – 1.IV.1984</i> )	(r)	4.VI.1964
<b>Switzerland</b>	(r)	21.I.1966
<b>Syrian Arab Republic</b>	(a)	10.VII.1973
<b>Tonga*</b>	(a)	13.VI.1978
<b>Tuvalu*</b>	(a)	21.VIII.1964
<b>United Arab Republic*</b> ( <i>denunciation – 8.V.1984</i> )	(a)	7.IX.1965
<b>United Kingdom*</b> ( <i>denunciation - 1.XII.1985</i> )	(r)	18.II.1959
<b>Isle of Man</b>	(a)	18.XI.1960
<b>Bermuda, British Antarctic Territories, Falkland and Dependencies, Gibraltar, British Virgin Islands</b>	(a)	21.VIII.1964
<b>Guernsey and Jersey</b>	(a)	21.X.1964
<b>Caiman Islands, Montserrat, Caicos and Turks Isles*</b> ( <i>denunciation - 1.XII.1985</i> )	(a)	4.VIII.1965
<b>Vanuatu</b>	(a)	8.XII.1966
<b>Zaire</b>	(a)	17.VII.1967

**Reservations****Bahamas**

...Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

**Barbados**

*Same reservation as Bahamas*

**China**

The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right not to be bound by paragraph 1.(c) of Article 1 of the Convention. The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to regulate by specific provisions of laws of the Macao Special Administrative Region the system of limitation of liability to be applied to ships of less than 300 tons. With reference to the implementation of the Convention in the Macao Special Administrative Region, the Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to implement the Convention either by giving it the force of law in the Macao Special Administrative Region, or by including the provisions of the Convention, in appropriate form, in legislation of the Macao Special Administrative Region. Within the above ambit, the Government of the People's Republic of China will assume the responsibility for the international rights and obligations that place on a Party to the Convention.

**Denmark**

Le Gouvernement du Danemark se réserve le droit:

- 1) de régler par la loi nationale le système de limitation de responsabilité applicable

aux navires de moins de 300 tonneaux de jauge;

2) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

### **Dominica, Republic of**

*Same reservation as Bahamas*

### **Egypt Arab Republic**

Reserves the right:

- 1) to exclude the application of Article 1, paragraph (1)(c);
- 2) to regulate by specific provisions of national law the system of limitation to be applied to ships of less than 300 tons;
- 3) on 8 May, 1984 the Egyptian Arab Republic has verbally notified the denunciation in respect of this Convention. This denunciation will become operative on 8 May, 1985.

### **Fiji**

Le 22 août 1972 a été reçue au Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement une lettre de Monsieur K.K.T. Mara, Premier Ministre et Ministre des Affaires étrangères de Fidji, notifiant qu'en ce qui concerne cette Convention, le Gouvernement de Fidji reprend, à partir de la date de l'indépendance de Fidji, c'est-à-dire le 10 octobre 1970, les droits et obligations souscrits antérieurement par le Royaume-Uni, avec les réserves figurant ci-dessous.

- 1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
- 2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.

Furthermore in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of signature, the Government of Fiji declare that the said Convention as such has not been made part in Fiji law, but that the appropriate provisions to give effect thereto have been introduced in Fiji law.

### **Ghana**

The Government of Ghana in acceding to the Convention reserves the right:

- 1) To exclude the application of Article 1, paragraph (1)(c);
- 2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
- 3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

### **Grenada**

*Same reservation as Bahamas*

### **Guyana**

*Same reservation as Bahamas*

### **Iceland**

The Government of Iceland reserves the right:

- 1) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
- 2) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

**India**

Reserve the right:

- 1) To exclude the application of Article 1, paragraph (1)(c);
- 2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
- 3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

**Iran**

Le Gouvernement de l'Iran se réserve le droit:

- 1) d'exclure l'application de l'article 1, paragraphe (1)(c);
- 2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
- 3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

**Israel**

The Government of Israel reserves to themselves the right to:

- 1) exclude from the scope of the Convention the obligations and liabilities stipulated in Article 1(1)(c);
- 2) regulate by provisions of domestic legislation the limitation of liability in respect of ships of less than 300 tons of tonnage;

The Government of Israel reserves to themselves the right to give effect to this Convention either by giving it the force of law or by including in its national legislation, in a form appropriate to that legislation, the provisions of this Convention.

**Kiribati**

*Same reservation as Bahamas*

**Mauritius**

*Same reservation as Bahamas*

**Monaco**

En déposant son instrument d'adhésion, Monaco fait les réserves prévues au paragraphe 2<sup>o</sup> du Protocole de signature.

**Netherlands-Aruba**

La Convention qui était, en ce qui concerne le Royaume de Pays-Bas, uniquement applicable au Royaume en Europe, a été étendue à Aruba à partir du 16.XII.1986 avec effet rétroactif à compter du 1er janvier 1986.

La dénonciation de la Convention par les Pays-Bas au 1er septembre 1989, n'est pas valable pour Aruba.

*Note: Le Gouvernement des Pays-Bas avait fait les réservations suivantes:*

Le Gouvernement des Pays-Bas se réserve le droit:

- 1) d'exclure l'application de l'article 1, paragraphe (1)(c);
- 2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
- 3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

... Conformément au paragraphe (2)(c) du Protocole de signature Nous nous réservons de donner effet à la présente Convention en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

**Papua New Guinea**

- (a) The Government of Papua New Guinea excludes paragraph (1)(c) of Article 1.

(b) The Government of Papua New Guinea will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.  
 (c) The Government of Papua New Guinea shall give effect to the said Convention by including the provisions of the said Convention in the National Legislation of Papua New Guinea.

#### **Portugal**

(Traduction) ...avec les réserves prévues aux alinéas a), b) et c) du paragraphe deux du Protocole de signature...

#### **St. Lucia**

*Same reservation as Bahamas*

#### **Seychelles**

*Same reservation as Bahamas*

#### **Singapore**

Le 13 septembre 1977 à été reçue une note verbale datée du 6 septembre 1977, émanant du Ministère des Affaires étrangères de Singapour, par laquelle le Gouvernement de Singapour confirme qu'il se considère lié par la Convention depuis le 31 mai 1968, avec les réserves suivantes:

...Subject to the following reservations:

- a) the right to exclude the application of Article 1, paragraph (1)(c); and
- b) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons. The Government of the Republic of Singapore declares under sub-paragraph (c) of paragraph (2) of the Protocol of signature that provisions of law have been introduced in the Republic of Singapore to give effect to the Convention, although the Convention as such has not been made part of Singapore law.

#### **Solomon Islands**

*Same reservation as Bahamas*

#### **Spain**

Le Gouvernement espagnol se réserve le droit:

- 1) d'exclure du champ d'application de la Convention les obligations et les responsabilités prévues par l'article 1, paragraphe (1)(c);
- 2) de régler par les dispositions particulières de sa loi nationale le système de limitation de responsabilité applicable aux propriétaires de navires de moins de 300 tonnes de jauge;
- 3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

#### **Tonga**

Reservations:

- 1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
- 2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga will regulate by specific provisions of national law the system of liability to be applied to ships of less than 300 tons.

#### **Tuvalu**

*Same reservation as Bahamas*

#### **United Kingdom of Great Britain and Northern Ireland**

Subject to the following observations:

- 1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said



*Limitation 1957 - Protocole 1979**Limitation 1957 - Protocol of 1979*

Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.

2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.

3) The Government of the United Kingdom of Great Britain and Northern Ireland also reserve the right, in extending the said Convention to any of the territories for whose international relations they are responsible, to make such extension subject to any or all of the reservations set out in paragraph (2) of the said Protocol of Signature. Furthermore, in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland declare that the said Convention as such has not been made part of the United Kingdom law, but that the appropriate provisions to give effect thereto have been introduced in United Kingdom law.

#### **United Kingdom Overseas Territories**

**Anguilla, Bermuda, British Antarctic Territories, British Virgin Islands, Caiman Islands, Caicos and Turks Isles, Falkland and Dependencies, Gibraltar, Guernsey and Jersey, Hong Kong, Isle of Man, Montserrat**

... Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

#### **Protocole portant modification de la convention internationale sur la Limitation de la responsabilité des propriétaires de navires de mer du 10 octobre 1957**

Bruxelles le 21 décembre 1979  
Entré en vigueur: 6 octobre 1984

**Australia**  
**Belgium**  
**Luxembourg**  
(*denunciation - 19.XI.2005*)

**Poland**  
**Portugal**  
**Spain**  
(*denunciation - 04.I. 2005*)

**Switzerland**  
**United Kingdom of Great Britain and Northern Ireland**  
(*denunciation - 1.XII.1985*)

*Isle of Man, Bermuda, Falkland and Dependencies, Gibraltar, Hong-Kong, British Virgin Islands, Guernsey and Jersey, Cayman Islands, Montserrat, Caicos and Turks Isles (denunciation - 1.XII.1985)*

#### **Protocol to amend the international convention relating to the Limitation of the liability of owners of sea-going ships of 10 October 1957**

Brussels, 21<sup>st</sup> December 1979  
Entered into force: 6 October 1984

(r) 30.XI.1983  
(r) 7.IX.1983  
(a) 18.II.1991

(r) 6.VII.1984  
(r) 30.IV.1982  
(r) 14.V.1982

(r) 20.I.1988

(r) 2.III.1982

*Stowaways 1957**Carriage of passengers 1961***Convention internationale sur les Passagers Clandestins**

Bruxelles, 10 octobre 1957  
Pas encore en vigueur

**Belgium**  
**Denmark**  
**Finland**  
**Italy**  
**Luxembourg**  
**Madagascar**  
**Morocco**  
**Norway**  
**Peru**  
**Syrian Arab Republic**  
**Sweden**

**International convention relating to Stowaways**

Brussels, 10<sup>th</sup> October 1957  
Not yet in force

(r) 31.VII.1975  
(r) 16.XII.1963  
(r) 2.II.1966  
(r) 24.V.1963  
(a) 18.II.1991  
(a) 13.VII.1965  
(a) 22.I.1959  
(r) 24.V.1962  
(r) 23.XI.1961  
(a) 15.IV.2003  
(r) 27.VI.1962

**Convention internationale  
pour l'unification de certaines  
règles en matière de  
Transport de passagers  
par mer  
et protocole**

Bruxelles, 29 avril 1961  
Entrée en vigueur: 4 juin 1965

**Algeria**  
**Cuba\***  
**France**  
*(denunciation – 3.XII.1975)*  
**Haiti**  
**Iran**  
**Madagascar**  
**Morocco\***  
**Peru**  
**Switzerland**  
**Tunisia**  
**United Arab Republic\***  
**Zaire**

**International convention  
for the unification of  
certain rules relating to  
Carriage of passengers  
by sea  
and protocol**

Brussels, 29<sup>th</sup> April 1961  
Entered into force: 4 June 1965

(a) 2.VII.1973  
(a) 7.I.1963  
(r) 4.III.1965  
(a) 19.IV.1989  
(a) 26.IV.1966  
(a) 13.VII.1965  
(r) 15.VII.1965  
(a) 29.X.1964  
(r) 21.I.1966  
(a) 18.VII.1974  
(r) 15.V.1964  
(a) 17.VII.1967

**Reservations****Cuba**

*(Traduction)* ...Avec les réserves suivantes:

1) De ne pas appliquer la Convention aux transports qui, d'après sa loi nationale, ne sont pas considérés comme transports internationaux.

*Carriage of passengers 1961**Nuclear ships 1962*

2) De ne pas appliquer la Convention, lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.

3) De donner effet à cette Convention, soit en lui donnant force de loi, soit en incluant dans sa législation nationale les dispositions de cette Convention sous une forme appropriée à cette législation.

#### **Morocco**

...Sont et demeurent exclus du champ d'application de cette convention:

1) les transports de passagers effectués sur les navires armés au cabotage ou au bornage, au sens donné à ces expressions par l'article 52 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par le dahir du 29 Chaabane 1380 (15 février 1961).

2) les transports internationaux de passagers lorsque le passager et le transporteur sont tous deux de nationalité marocaine.

Les transports de passagers visés...ci-dessus demeurent régis en ce qui concerne la limitation de responsabilité, par les disposition de l'article 126 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par la dahir du 16 Joumada II 1367 (26 avril 1948).

#### **United Arab Republic**

Sous les réserves prévues aux paragraphes (1), (2) et (3) du Protocole.

#### **Convention internationale relative à la responsabilité des exploitants de Navires nucléaires et protocole additionnel**

Bruxelles, 25 mai 1962  
Pas encore en vigueur

#### **International convention relating to the liability of operators of Nuclear ships and additional protocol**

Brussels, 25<sup>th</sup> May 1962  
Not yet in force

**Lebanon**  
**Madagascar**  
**Netherlands\***

**Portugal**

**Suriname**

**Syrian Arab Republic**

**Zaire**

(r)	3.VI.1975
(a)	13.VII.1965
(r)	30.III.1974
(r)	31.VII.1968
(r)	20.III.1974
(a)	1.VIII.1974
(a)	17.VII.1967

#### **Reservations**

##### **Netherlands**

Par note verbale datée du 29 mars 1976, reçue le 5 avril 1976, par le Gouvernement belge, l'Ambassade des Pays-Bas à Bruxelles a fait savoir:

Le Gouvernement du Royaume des Pays-Bas tient à déclarer, en ce qui concerne les dispositions du Protocole additionnel faisant partie de la Convention, qu'au moment de son entrée en vigueur pour le Royaume des Pays-Bas, ladite Convention y devient impérative, en ce sens que les prescriptions légales en vigueur dans le Royaume n'y seront pas appliquées si cette application est inconciliable avec les dispositions de la Convention.

*Carriage of passengers' luggage 1967**Vessels under construction 1967*

**Convention internationale  
pour l'unification de certaines  
règles en matière de  
Transport de bagages  
de passagers par mer**

Bruxelles, 27 mai 1967  
Pas en vigueur

**International Convention  
for the unification of  
certain rules relating to  
Carriage of passengers'  
luggage by sea**

Brussels, 27<sup>th</sup> May 1967  
Not in force

**Algeria**

**(a)**

2.VII.1973

**Cuba\***

**(a)**

15.II.1972

**Reservations**

**Cuba**

*(Traduction)* Le Gouvernement révolutionnaire de la République de Cuba, Partie Contractante, formule les réserves formelles suivantes:

- 1) de ne pas appliquer cette Convention lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.
- 3) en donnant effet à cette Convention, la Partie Contractante pourra, en ce qui concerne les contrats de transport établis à l'intérieur de ses frontières territoriales pour un voyage dont le port d'embarquement se trouve dans lesdites limites territoriales, prévoir dans sa législation nationale la forme et les dimensions des avis contenant les dispositions de cette Convention et devant figurer dans le contrat de transport. De même, le Gouvernement révolutionnaire de la République de Cuba déclare, selon le prescrit de l'article 18 de cette Convention, que la République de Cuba ne se considère pas liée par l'article 17 de ladite Convention.

**Convention internationale relative à  
l'inscription des droits relatifs aux**

**Navires en construction**

Bruxelles, 27 mai 1967  
Pas encore en vigueur

**International Convention relating  
to the registration of rights  
in respect of**

**Vessels under construction**

Brussels, 27<sup>th</sup> May 1967  
Not yet in force

**Croatia**

**(r)**

3.V.1971

**Greece**

**(r)**

12.VII.1974

**Norway**

**(r)**

7.II.1975

*(withdrawal of ratification – 7.X.2010)*

**Sweden**

**(r)**

13.XI.1975

**Syrian Arab Republic**

**(a)**

1.VIII.1974

**Convention internationale  
pour l'unification de  
certaines règles relatives aux  
Privilèges et hypothèques  
maritimes**

Bruxelles, 27 mai 1967  
Pas encore en vigueur

**International Convention  
for the unification of  
certain rules relating to  
Maritime liens and  
mortgages**

Brussels, 27<sup>th</sup> May 1967  
Not yet in force

<b>Denmark*</b>	<b>(r)</b>	23.VIII.1977
<b>Morocco*</b>	<b>(a)</b>	12.II.1987
<b>Norway*</b>	<b>(r)</b>	13.V.1975
<b>Sweden*</b>	<b>(r)</b>	13.XI.1975
<b>Syrian Arab Republic</b>	<b>(a)</b>	1.VIII.1974
<b>Vanuatu</b>	<b>(a)</b>	26.X.1999

**Reservations**

**Denmark**

L'instrument de ratification du Danemark est accompagné d'une déclaration dans laquelle il est précisé qu'en ce qui concerne les Iles Féroé les mesures d'application n'ont pas encore été fixées.

**Morocco**

L'instrument d'adhésion est accompagné de la réserve suivante: Le Royaume du Maroc adhère à la Convention Internationale pour l'unification de certaines règles relatives aux privilèges et hypothèques maritimes faite à Bruxelles le 27 mai 1967, sous réserve de la non-application de l'article 15 de la dite Convention.

**Norway**

Conformément à l'article 14 le Gouvernement du Royaume de Norvège fait les réserves suivantes:

- 1) mettre la présente Convention en vigueur en incluant les dispositions de la présente Convention dans la législation nationale suivant une forme appropriée à cette législation;
- 2) faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

**Sweden**

Conformément à l'article 14 la Suède fait les réserves suivantes:

- 1) de mettre la présente Convention en vigueur en incluant les dispositions de la Convention dans la législation nationale suivant une forme appropriée à cette législation;
- 2) de faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

## **STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE IMO CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW**

### *Editor's notes*

1. This Status is based on advices from the International Maritime Organisation and reflects the situation as at 30 December 2016.
2. The dates mentioned are the dates of the deposit of instruments.
3. The asterisk after the name of a State Party indicates that that State has made declarations, reservations or statements the text of which is published after the relevant status of ratifications and accessions.
4. The dates mentioned in respect of the denunciation are the dates when the denunciation takes effect.

## **ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS DE L'OMI EN MATIERE DE DROIT MARITIME PRIVE**

### *Notes de l'éditeur*

1. Cet état est basé sur des informations recues de l'Organisation Maritime Internationale et reflète la situation au 30 Décembre 2016.
2. Les dates mentionnées sont les dates du dépôt des instruments.
3. L'asterisque qui suit le nom d'un Etat indique que cet Etat a fait une déclaration, une reserve ou une communication dont le texte est publié à la fin de chaque état de ratifications et adhesions.
4. Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonciation prend effet.

*CLC 1969***International Convention on  
Civil liability  
for oil pollution damage****(CLC 1969)**Done at Brussels, 29 November 1969  
Entered into force: 19 June 1975**Convention Internationale sur la  
Responsabilité civile pour  
les dommages dus à la  
pollution par les hydrocarbures  
(CLC 1969)**Signée à Bruxelles, le 29 novembre 1969  
Entrée en vigueur: 19 juin 1975

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
<b>Albania (accession)</b>	6.IV.1994	5.VII.1994	30.VI.2006
<b>Algeria (accession)</b>	14.VI.1974	19.VI.1975	3.VIII.1999
<b>Antigua and Barbuda (accession)</b>	23.VI.1997	21.IX.1997	14.VI.2001
<b>Australia (ratification)<sup>1</sup></b>	7.XI.1983	5.II.1984	15.V.1998
<b>Azerbaijan (accession)</b>	16.VII.2004	14.X.2004	
<b>Bahamas (accession)</b>	22.VII.1976	20.X.1976	15.V.1998
<b>Bahrain (accession)</b>	3.V.1996	1.VIII.1996	15.V.1998
<b>Barbados (accession)</b>	6.V.1994	4.VIII.1994	7.VII.1999
<b>Belgium (ratification)<sup>1</sup></b>	12.I.1977	12.IV.1977	6.X.1999
<b>Belize (accession)</b>	2.IV.1991	1.VII.1991	27.XI.1999
<b>Benin (accession)</b>	1.XI.1985	30.I.1986	
<b>Brazil (ratification)</b>	17.XII.1976	17.III.1977	
<b>Brunei Darussalam (accession)</b>	29.IX.1992	28.XII.1992	31.I.2003
<b>Cambodia (accession)</b>	28.XI.1994	26.II.1995	
<b>Cameroon (ratification)</b>	14.V.1984	12.VIII.1984	15.X.2002
<b>Canada (accession)</b>	24.I.1989	24.IV.1989	29.V.1999
<b>Chile (accession)</b>	2.VIII.1977	31.X.1977	
<b>China<sup>2</sup> (accession)<sup>1</sup></b>	30.I.1980	29.IV.1980	5.I.2000
<b>Colombia (accession)</b>	26.III.1990	24.VI.1990	25.I.2006
<b>Costa Rica (accession)</b>	8.XII.1997	8.III.1998	
<b>Côte d'Ivoire (ratification)</b>	21.VI.1973	19.VI.1975	
<b>Croatia (succession)</b>	—	8.X.1991	30.VII.1999
<b>Cyprus (accession)</b>	19.VI.1989	17.IX.1989	15.V.1998
<b>Denmark (accession)</b>	2.IV.1975	19.VI.1975	15.V.1998
<b>Djibouti (accession)</b>	1.III.1990	30.V.1990	17.V.2002
<b>Dominican Republic (ratification)</b>	2.IV.1975	19.VI.1975	
<b>Ecuador (accession)</b>	23.XII.1976	23.III.1977	
<b>Egypt (accession)</b>	3.II.1989	4.V.1989	
<b>El Salvador (accession)</b>	2.I.2002	2.IV.2002	
<b>Equatorial Guinea (accession)</b>	24.IV.1996	23.VII.1996	
<b>Estonia (accession)</b>	1.XII.1992	1.III.1993	6.VIII.2006
<b>Fiji (accession)</b>	15.VIII.1972	19.VI.1975	30.XI.2000
<b>Finland (ratification)</b>	10.X.1980	8.I.1981	15.V.1998
<b>France (ratification)</b>	17.III.1975	19.VI.1975	15.V.1998
<b>Gabon (accession)</b>	21.I.1982	21.IV.1982	31.V.2003
<b>Gambia (accession)</b>	1.XI.1991	30.I.1992	

*CLC 1969*

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
<b>Georgia (accession)</b>	19.IV.1994	18.VII.1994	
<b>Germany<sup>3</sup> (ratification)<sup>1</sup></b>	20.V.1975	18.VIII.1975 <sup>4</sup>	15.V.1998
<b>Ghana (ratification)</b>	20.IV.1978	19.VII.1978	
<b>Greece (accession)</b>	29.VI.1976	27.IX.1976	15.V.1998
<b>Guatemala (acceptance)<sup>1</sup></b>	20.X.1982	18.I.1983	
<b>Guyana (accession)</b>	10.XII.1997	10.III.1998	
<b>Honduras (accession)</b>	2.XII.1998	2.III.1999	
<b>Iceland (ratification)</b>	17.VII.1980	15.X.1980	10.II.2001
<b>India (accession)</b>	1.V.1987	30.VII.1987	21.VI.2001
<b>Indonesia (ratification)</b>	1.IX.1978	30.XI.1978	
<b>Ireland (ratification)</b>	19.XI.1992	17.II.1993	15.V.1998
<b>Italy (ratification)<sup>1</sup></b>	27.II.1979	28.V.1979	8.X.2000
<b>Japan (accession)</b>	3.VI.1976	1.IX.1976	15.V.1998
<b>Jordan (accession)</b>	14.X.2003	12.I.2004	
<b>Kazakhstan (accession)</b>	7.III.1994	5.VI.1994	
<b>Kenya (accession)</b>	15.XII.1992	15.III.1993	7.VII.2001
<b>Kuwait (accession)</b>	2.IV.1981	1.VII.1981	
<b>Latvia (accession)</b>	10.VII.1992	8.X.1992	19.VII.2011
<b>Lebanon (accession)</b>	9.IV.1974	19.VI.1975	
<b>Liberia (accession)</b>	25.IX.1972	19.VI.1975	15.V.1998
<b>Libyan Arab Jamahiriya (accession)</b>	28.IV.2005	26.VII.2005	
<b>Luxembourg (accession)</b>	14.II.1991	15.V.1991	21.XI.2006
<b>Malaysia (accession)</b>	6.I.1995	6.IV.1995	9.VI.2005
<b>Maldives (accession)</b>	16.III.1981	14.VI.1981	
<b>Malta (accession)</b>	27.IX.1991	26.XII.1991	6.I.2001
<b>Marshall Islands (accession)</b>	24.I.1994	24.IV.1994	15.V.1998
<b>Mauritania (accession)</b>	17.XI.1995	15.II.1996	4.V.2013
<b>Mauritius (accession)</b>	6.IV.1995	5.VII.1995	6.XII.2000
<b>Mexico (accession)</b>	13.V.1994	11.VIII.1994	15.V.1998
<b>Monaco (ratification)</b>	21.VIII.1975	19.XI.1975	15.V.1998
<b>Mongolia (accession)</b>	3.III.2003	1.VI.2003	
<b>Montenegro (succession)<sup>6, 7</sup></b>	–	6.VI.2006	23.II.2008
<b>Morocco (accession)</b>	11.IV.1974	19.VI.1975	25.X.2001
<b>Mozambique (accession)</b>	23.XII.1996	23.III.1997	26.IV.2003
<b>Netherlands (ratification)</b>	9.IX.1975	8.XII.1975	15.V.1998
<b>New Zealand (accession)</b>	27.IV.1976	26.VII.1976	25.VI.1999
<b>Nicaragua (accession)</b>	4.VI.1996	2.IX.1996	
<b>Nigeria (accession)</b>	7.V.1981	5.VIII.1981	24.V.2003
<b>Norway (accession)</b>	21.III.1975	19.VI.1975	15.V.1998
<b>Oman (accession)</b>	24.I.1985	24.IV.1985	15.V.1998
<b>Panama (ratification)</b>	7.I.1976	6.IV.1976	11.V.2000
<b>Papua New Guinea (accession)</b>	12.III.1980	10.VI.1980	23.I.2002
<b>Peru (accession)<sup>1</sup></b>	24.II.1987	25.V.1987	
<b>Poland (ratification)</b>	18.III.1976	16.VI.1976	21.XII.2000
<b>Portugal (ratification)</b>	26.XI.1976	24.II.1977	1.XII.2005
<b>Qatar (accession)</b>	2.VI.1988	31.VIII.1988	20.XI.2002
<b>Republic of Korea (accession)</b>	18.XII.1978	18.III.1979	15.V.1998



*CLC 1969*

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
<b>Russian Federation</b> <sup>5</sup> (accession) <sup>1</sup>	24.VI.1975	22.IX.1975	20.III.2001
<b>Saint Kitts and Nevis</b> (accession) <sup>1</sup>	14.IX.1994	13.XII.1994	
<b>Saint Vincent and the Grenadines</b> (accession)	19.IV.1989	18.VII.1989	9.X.2002
<b>Sao Tome and Principe</b> (accession)	29.X.1998	27.I.1999	
<b>Saudi Arabia</b> (accession) <sup>1</sup>	15.IV.1993	14.VII.1993	
<b>Senegal</b> (accession)	27.III.1972	19.VI.1975	
<b>Serbia</b> (succession) <sup>6, 7</sup>	–	3.VI.2006	25.V.2012
<b>Seychelles</b> (accession)	12.IV.1988	11.VII.1988	23.VII.2000
<b>Sierra Leone</b> (accession)	13.VIII.1993	11.XI.1993	4.VI.2002
<b>Singapore</b> (accession)	16.IX.1981	15.XII.1981	31.XII.1998
<b>Slovenia</b> (succession)	–	25.VI.1991	19.VII.2001
<b>South Africa</b> (accession)	17.III.1976	15.VI.1976	1.X.2005
<b>Spain</b> (ratification)	8.XII.1975	7.III.1976	15.V.1998
<b>Sri Lanka</b> (accession)	12.IV.1983	11.VII.1983	22.I.2000
<b>Sweden</b> (ratification)	17.III.1975	19.VI.1975	15.V.1998
<b>Switzerland</b> (ratification)	15.XII.1987	14.III.1988	15.V.1998
<b>Syrian Arab Republic</b> (accession) <sup>1</sup>	6.II.1975	19.VI.1975	
<b>Tonga</b> (accession)	1.II.1996	1.V.1996	10.XII.2000
<b>Tunisia</b> (accession)	4.V.1976	2.VIII.1976	15.V.1998
<b>Turkmenistan</b> (accession)	21.IX.2009	20.XII.2009	
<b>Tuvalu</b> (succession)	–	1.X.1978	30.VI.2005
<b>United Arab Emirates</b> (accession)	15.XII.1983	14.III.1984	
<b>United Kingdom</b> (ratification)	17.III.1975	19.VI.1975	15.V.1998
<b>Vanuatu</b> (accession)	2.II.1983	3.V.1983	18.II.2000
<b>Venezuela</b> (accession)	21.I.1992	20.IV.1992	22.VII.1999
<b>Yemen</b> (accession)	6.III.1979	4.VI.1979	31.VII.2009

Number of Contracting States: 34

The Convention applies provisionally in respect of the following States:

Kiribati

Solomon Islands

<sup>1</sup> With a declaration, reservation or statement.

<sup>2</sup> Applied to the Hong Kong Special Administrative Region with effect from 1.VII.1997. Effective date of denunciation: 5.I.2000.

<sup>3</sup> On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded to the Convention on 13.III.1978.

<sup>4</sup> In accordance with the intention expressed by the Government of the Federal Republic of Germany and based on its interpretation of article XV of the Convention.

<sup>5</sup> As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

<sup>6</sup> As from 4 February 2003, the name of the State of the Federal Republic of Yugoslavia was changed to Serbia and Montenegro. The date of succession by Serbia and Montenegro to the Convention is the date on which the Federal Republic of Yugoslavia assumed responsibility for its international relations.

<sup>7</sup> Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Convention with effect from the same date, i.e. 3 June 2006.

## Declarations, Reservations and Statements

### Australia

The instrument of ratification of the Commonwealth of Australia was accompanied by the following declarations:

“Australia has taken note of the reservation made by the Union of Soviet Socialist Republics on its accession on 24 June 1975 to the Convention, concerning article XI(2) of the Convention. Australia wishes to advise that is unable to accept the reservation. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. It is also Australia’s understanding that the above-mentioned reservation is not intended to have the effect that the Union of Soviet Socialist Republics may claim judicial immunity of a foreign State with respect to ships owned by it, used for commercial purposes and operated by a company which in the Union of Soviet Socialist Republic is registered as the ship’s operator, when actions for compensation are brought against the company in accordance with the provisions of the Convention. Australia also declares that, while being unable to accept the Soviet reservation, it does not regard that fact as precluding the entry into force of the Convention as between the Union of Soviet Socialist Republics and Australia.”

“Australia has taken note of the declaration made by the German Democratic Republic on its accession on 13 March 1978 to the Convention, concerning article XI(2) of the Convention. Australia wishes to declare that it cannot accept the German Democratic Republic’s position on sovereign immunity. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. Australia also declares that, while being unable to accept the declaration by the German Democratic Republic, it does not regard that fact as precluding the entry into force of the Convention as between the German Democratic Republic and Australia.”

### Belgium

The instrument of ratification of the Kingdom of Belgium was accompanied by a Note Verbale (in the French language) the text of which reads as follows:

*[Translation]*

“...The Government of the Kingdom of Belgium regrets that it is unable to accept the reservation of the Union of Soviet Socialist Republics, dated 24 June 1975, in respect of article XI, paragraph 2 of the Convention.

The Belgian Government considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes.

Belgian legislation concerning the immunity of State-owned vessels is in accordance with the provisions of the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, done at Brussels on 10 April 1926, to which Belgium is a Party.

The Belgian Government assumes that the reservation of the USSR does not in any way affect the provisions of article 16 of the Maritime Agreement between the Belgian-Luxembourg Economic Union and the Union of Soviet Socialist Republics,

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*CLC 1969*

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of the Protocol and the Exchange of Letters, signed at Brussels on 17 November 1972. The Belgian Government also assumes that this reservation in no way affects the competence of a Belgian court which, in accordance with article IX of the aforementioned International Convention, is seized of an action for compensation for damage brought against a company registered in the USSR in its capacity of operator of a vessel owned by that State, because the said company, by virtue of article I, paragraph 3 of the same Convention, is considered to be the 'owner of the ship' in the terms of this Convention.

The Belgian Government considers, however, that the Soviet reservation does not impede the entry into force of the Convention as between the Union of Soviet Socialist Republics and the Kingdom of Belgium."

**China**

At the time of depositing its instrument of accession the Representative of the People's Republic of China declared "that the signature to the Convention by Taiwan authorities is illegal and null and void".

**German Democratic Republic**

The instrument of accession of the German Democratic Republic was accompanied by the following statement and declarations (in the German language):

*[Translation]*

"In connection with the declaration made by the Government of the Federal Republic of Germany on 20 May 1975 concerning the application of the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 to Berlin (West), it is the understanding of the German Democratic Republic that the provisions of the Convention may be applied to Berlin (West) only inasmuch as this is consistent with the Quadripartite Agreement of 3 September 1971, under which Berlin (West) is no constituent part of the Federal Republic of Germany and must not be governed by it."

"The Government of the German Democratic Republic considers that the provisions of article XI, paragraph 2, of the Convention are inconsistent with the principle of immunity of States."<sup>(1)</sup>

The Government of the German Democratic Republic considers that the provisions of article XIII, paragraph 2, of the Convention are inconsistent with the principle that all States pursuing their policies in accordance with the purposes and principles of the Charter of the United Nations shall have the right to become parties to conventions affecting the interests of all States.

The position of the Government of the German Democratic Republic on article XVII of the Convention, as far as the application of the Convention to colonial and other dependent territories is concerned, is governed by the provisions of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960) proclaiming the necessity of bringing a speedy and unconditional end to colonialism in all its forms and manifestations."

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<sup>(1)</sup> The following Governments do not accept the reservation contained in the instrument of accession of the Government of the German Democratic Republic, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, Norway, Sweden and the United Kingdom.

**Federal Republic of Germany**

The instrument of ratification of the Federal Republic of Germany was accompanied by a declaration (in the English language) that “with effect from the day on which the Convention enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)”.

**Guatemala**

The instrument of acceptance of the Republic of Guatemala contained the following declaration (in the Spanish language):

*[Translation]*

“It is declared that relations that may arise with Belize by virtue of this accession can in no sense be interpreted as recognition by the State of Guatemala of the independence and sovereignty unilaterally decreed by Belize.”

**Italy**

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the Italian language):

*[Translation]*

“The Italian Government wishes to state that it has taken note of the reservation put forward by the Government of the Soviet Union (on the occasion of the deposit of the instrument of accession on 24 June 1975) to article XI(2) of the International Convention on civil liability for oil pollution damage, adopted in Brussels on 29 November 1969.

The Italian Government declares that it cannot accept the aforementioned reservation and, with regard to the matter, observes that, under international law, the States have no right to jurisdictional immunity in cases where vessels of theirs are utilized for commercial purposes.

The Italian Government therefore considers its judicial bodies competent - as foreseen by articles IX and XI(2) of the Convention - in actions for the recovery of losses incurred in cases involving vessels belonging to States employing them for commercial purposes, as indeed in cases where, on the basis of article I(3), it is a company, running vessels on behalf of a State, that is considered the owner of the vessel.

The reservation and its non-acceptance by the Italian Government do not, however, preclude the coming into force of the Convention between the Soviet Union and Italy, and its full implementation, including that of article XI(2).”

**Peru<sup>(2)</sup>**

The instrument of accession of the Republic of Peru contained the following reservation (in the Spanish language):

*[Translation]*

“With respect to article II, because it considers that the said Convention will be understood as applicable to pollution damage caused in the sea area under the

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<sup>(2)</sup> The depositary received the following communication dated 14 July 1987 from the Embassy of the Federal Republic of Germany in London (in the English language):

“...the Government of the Federal Republic of Germany has the honour to reiterate its well-known position as to the sea area up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast, claimed by Peru to be under the sovereignty and

sovereignty and jurisdiction of the Peruvian State, up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast”.

**Russian Federation**

*See USSR.*

**Saint Kitts and Nevis**

The instrument of accession of Saint Kitts and Nevis contained the following declaration:

“The Government of Saint Kitts and Nevis considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes”.

**Saudi Arabia**

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):

*[Translation]*

“However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol”.

**Syrian Arab Republic**

The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):

*[Translation]*

“...this accession [to the Convention] in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention”.

**USSR**

The instrument of accession of the Union of Soviet Republics contains the following reservation (in the Russian language):

*[Translation]*

“The Union of Soviet Socialist Republic does not consider itself bound by the

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jurisdiction of the Peruvian State. In this respect the Federal Government points again to the fact that according to international law no coastal State can claim unrestricted sovereignty and jurisdiction beyond its territorial sea, and that the maximum breadth of the territorial sea according to international law is 12 nautical miles.”

The depositary received the following communication dated 4 November 1987 from the Permanent Mission of the Union of Soviet Socialist Republics to the International Maritime Organization (in the Russian language):

*[Translation]*

“...the Soviet Side has the honour to confirm its position in accordance with which a coastal State has no right to claim an extension of its sovereignty to sea areas beyond the outer limit of its territorial waters the maximum breadth of which in accordance with international law cannot exceed 12 nautical miles.”

provisions of article XI, paragraph 2 of the Convention, as they contradict the principle of the judicial immunity of a foreign State.”<sup>(3)</sup>

Furthermore, the instrument of accession contains the following statement (in the Russian language):

*[Translation]*

“On its accession to the International Convention on Civil Liability for Oil Pollution Damage, 1969, the Union of Soviet Socialist Republics considers it necessary to state that:

“(a) the provisions of article XIII, paragraph 2 of the Convention which deny participation in the Convention to a number of States, are of a discriminatory nature and contradict the generally recognized principle of the sovereign equality of States, and

(b) the provisions of article XVII of the Convention envisaging the possibility of its extension by the Contracting States to the territories for the international relations of which they are responsible are outdated and contradict the United Nations Declaration on Granting Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960)”.

The depositary received on 17 July 1979 from the Embassy of the Union of Soviet Socialist Republics in London a communication stating that:

“...the Soviet side confirms the reservation to paragraph 2 of article XI of the International Convention of 1969 on the Civil Liability for Oil Pollution Damage, made by the Union of Soviet Socialist Republics at adhering to the Convention. This reservation reflects the unchanged and well-known position of the USSR regarding the impermissibility of submitting a State without its express consent to the courts jurisdiction of another State. This principle of the judicial immunity of a foreign State is consistently upheld by the USSR at concluding and applying multilateral international agreements on various matters, including those of merchant shipping and the Law of the sea.

In accordance with article III and other provisions of the 1969 Convention, the liability for the oil pollution damage, established by the Convention is attached to “the owner” of “the ship”, which caused such damage, while paragraph 3 of article I of the Convention stipulates that “in the case of a ship owned by a state and operated by a company which in that state is registered as the ship’s operator, “owner” shall mean such company”. Since in the USSR state ships used for commercial purposes are under the operational management of state organizations who have an independent liability on their obligations, it is only against these organizations and not against the Soviet state that actions for compensation of the oil pollution damage in accordance with the 1969 Convention could be brought. Thus the said reservation does not prevent the consideration in foreign courts in accordance with the jurisdiction established by the Convention, of such suits for the compensation of the damage by the merchant ships owned by the Soviet state”.

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<sup>(3)</sup> The following Governments do not accept the reservation contained in the instrument of accession of the Government of the Union of Soviet Socialist Republics, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, the Netherlands, New Zealand, Norway, Sweden, the United Kingdom.

*CLC Protocol 1976*

**Protocol to the International  
Convention on  
Civil liability  
for oil pollution damage**

**(CLC PROT 1976)**

Done at London,  
19 November 1976  
Entered into force: 8 April 1981

**Protocole à la Convention  
Internationale sur la  
Responsabilité civile pour  
les dommages dus à la  
pollution par les  
hydrocarbures  
(CLC PROT 1976)**

Signé à Londres,  
le 19 novembre 1976  
Entré en vigueur: 8 avril 1981

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>	<b>Effective date of denunciation</b>
<b>Albania (accession)</b>	6.IV.1994	5.VII.1994	
<b>Antigua and Barbuda (accession)</b>	23.VI.1997	21.IX.1997	
<b>Australia (accession)</b>	7.XI.1983	5.II.1984	
<b>Azerbaijan (accession)</b>	16.VII.2004	14.X.2004	
<b>Bahamas (acceptance)</b>	3.III.1980	8.IV.1981	
<b>Bahrain (accession)</b>	3.V.1996	1.VIII.1996	
<b>Barbados (accession)</b>	6.V.1994	4.VIII.1994	
<b>Belgium (accession)</b>	15.VI.1989	13.IX.1989	
<b>Belize (accession)</b>	2.IV.1991	1.VII.1991	
<b>Brunei Darussalam (accession)</b>	29.IX.1992	28.XII.1992	
<b>Cambodia (accession)</b>	8.VI.2001	6.IX.2001	
<b>Cameroon (accession)</b>	14.V.1984	12.VIII.1984	
<b>Canada (accession)</b>	24.I.1989	24.IV.1989	
<b>China (accession)<sup>1,2</sup></b>	29.IX.1986	28.XII.1986	22.VIII.2003
<b>Colombia (accession)</b>	26.III.1990	24.VI.1990	25.I.2006
<b>Costa Rica (accession)</b>	8.XII.1997	8.III.1998	
<b>Cyprus (accession)</b>	19.VI.1989	17.IX.1989	
<b>Denmark (accession)</b>	3.VI.1981	1.IX.1981	
<b>Egypt (accession)</b>	3.II.1989	4.V.1989	
<b>El Salvador (accession)</b>	2.I.2002	2.IV.2002	
<b>Finland (accession)</b>	8.I.1981	8.IV.1981	
<b>France (approval)</b>	7.XI.1980	8.IV.1981	
<b>Georgia (accession)</b>	25.VIII.1995	23.XI.1995	
<b>Germany (ratification)<sup>2</sup></b>	28.VIII.1980	8.IV.1981	
<b>Greece (accession)</b>	10.V.1989	8.VIII.1989	
<b>Iceland (accession)</b>	24.III.1994	22.VI.1994	
<b>India (accession)</b>	1.V.1987	30.VII.1987	
<b>Ireland (accession)</b>	19.XI.1992	17.II.1993	15.V.1998
<b>Italy (accession)</b>	3.VI.1983	1.IX.1983	
<b>Japan (accession)</b>	24.VIII.1994	22.XI.1994	

*CLC Protocol 1976*

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
<b>Kuwait (accession)</b>	1.VII.1981	29.IX.1981	
<b>Liberia (accession)</b>	17.II.1981	8.IV.1981	
<b>Luxembourg (accession)</b>	14.II.1991	15.V.1991	
<b>Maldives (accession)</b>	14.VI.1981	12.IX.1981	
<b>Malta (accession)</b>	27.IX.1991	26.XII.1991	6.I.2001
<b>Marshall Islands (accession)</b>	24.I.1994	24.IV.1994	
<b>Mauritania (accession)</b>	17.XI.1995	15.II.1996	
<b>Mauritius (accession)</b>	6.IV.1995	5.VII.1995	
<b>Mexico (accession)</b>	13.V.1994	11.VIII.1994	
<b>Netherlands (accession)</b>	3.VIII.1982	1.XI.1982	
<b>Nicaragua (accession)</b>	4.VI.1996	2.IX.1996	
<b>Norway (accession)</b>	17.VII.1978	8.IV.1981	
<b>Oman (accession)</b>	24.I.1985	24.IV.1985	
<b>Peru (accession)</b>	24.II.1987	25.V.1987	
<b>Poland (accession)<sup>1</sup></b>	30.X.1985	28.I.1986	
<b>Portugal (accession)</b>	2.I.1986	2.IV.1986	
<b>Qatar (accession)</b>	2.VI.1988	31.VIII.1988	20.XI.2002
<b>Republic of Korea (accession)</b>	8.XII.1992	8.III.1993	
<b>Russian Federation (accession)<sup>1, 4</sup></b>	2.XII.1988	2.III.1989	
<b>Saudi Arabia (accession)<sup>3</sup></b>	15.IV.1993	14.VII.1993	
<b>Singapore (accession)</b>	15.XII.1981	15.III.1982	
<b>Spain (accession)</b>	22.X.1981	20.I.1982	
<b>Sweden (ratification)</b>	7.VII.1978	8.IV.1981	
<b>Switzerland (accession)<sup>1</sup></b>	15.XII.1987	14.III.1988	
<b>United Arab Emirates (accession)</b>	14.III.1984	12.VI.1984	
<b>United Kingdom (ratification)<sup>1</sup></b>	31.I.1980	8.IV.1981	15.V.1998
<b>Vanuatu (accession)</b>	13.I.1989	13.IV.1989	
<b>Venezuela (accession)</b>	21.I.1992	20.IV.1992	
<b>Yemen (accession)</b>	4.VI.1979	8.IV.1981	

Number of Contracting States: 53

<sup>1</sup> With a notification under article V(9)(c) of the Convention, as amended by the Protocol.

<sup>2</sup> Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997. Ceased to apply to the Hong Kong Special Administrative Region with effect from 22.VIII.2003.

<sup>3</sup> With a declaration.

<sup>4</sup> As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.



*CLC Protocol 1976***States which have denounced the Protocol**

	<b>Date of receipt of denunciation</b>	<b>Effective date of denunciation</b>
<b>Australia</b>	22.VI.1988	[date of entry into force of 1984 CLC Protocol]
<b>China (in respect of HKAR)</b>	22.VIII/2002	22.VIII.2003
<b>Colombia</b>	25.I.2005	25.I.2006
<b>Ireland</b>	15.V.1997	15.V.2008
<b>Malta</b>	6.I.2000	6.I.2001
<b>Qatar</b>	28.XI.2001	28.XI.2002
<b>United Kingdom</b>	12.V.1997	12.V.1998

**Declarations, Reservations and Statements****Federal Republic of Germany**

The instrument of ratification of the Federal Republic of Germany contains the following declaration (in the English language):

“...with effect from the date on which the Protocol enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)”.

**Saudi Arabia**

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):

*[Translation]*

“However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol”.

**Notifications****Article V(9)(c) of the Convention, as amended by the Protocol****China**

“...the value of the national currency, in terms of SDR, of the People’s Republic of China is calculated in accordance with the method of valuation applied by the International Monetary Fund.”

**Poland**

“Poland will now calculate financial liabilities in cases of limitation of the liability of owners of sea-going ships and liability under the International Oil Pollution Compensation Fund in terms of the Special Drawing Right, as defined by the International Monetary Fund.

However, those SDR's will be converted according to the method instigated by Poland, which is derived from the fact that Poland is not a member of the International Monetary Fund.

The method of conversion is that the Polish National Bank will fix a rate of exchange of the SDR to the Polish zloty through the conversion of the SDR to the United States dollar, according to the current rates of exchange quoted by Reuter. The US dollars will then be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies.

The above method of calculation is in accordance with the provisions of article II paragraph 9 item "a" (in fine) of the Protocol to the International Convention on Civil Liability for Oil Pollution Damage and article II of the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage."

### **Switzerland**

#### *[Translation]*

"The Swiss Federal Council declares, with reference to article V, paragraph 9(a) and (c) of the Convention, introduced by article II of the Protocol of 19 November 1976, that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:

The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette.

### **USSR**

"In accordance with article V, paragraph 9 "c" of the International Convention on Civil Liability for Oil Pollution Damage, 1969 in the wording of article II of the Protocol of 1976 to this Convention it is declared that the value of the unit of "The Special Drawing Right" expressed in Soviet roubles is calculated on the basis of the US dollar rate in effect at the date of the calculation in relation to the unit of "The Special Drawing Right", determined by the International Monetary Fund, and the US dollar rate in effect at the same date in relation to the Soviet rouble, determined by the State Bank of the USSR".

### **United Kingdom**

"...in accordance with article V(9)(c) of the Convention, as amended by article II(2) of the Protocol, the manner of calculation employed by the United Kingdom pursuant to article V(9)(a) of the Convention, as amended, shall be the method of valuation applied by the International Monetary Fund.

*CLC Protocol 1992***Protocol of 1992 to amend the  
International Convention on****Civil liability for oil  
pollution damage, 1969****(CLC PROT 1992)**

Done at London,  
27 November 1992  
Entry into force: 30 May 1996

**Protocole à la Convention  
Internationale sur la  
Responsabilité civile pour  
les dommages dus à la  
pollution par les  
hydrocarbures, 1969****(CLC PROT 1992)**

Signé à Londres,  
le 27 novembre 1992  
Entrée en vigueur: 30 May 1996

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Albania (accession)</b>	30.VI.2005	30.VI.2006
<b>Algeria (accession)</b>	11.VI.1998	11.VI.1999
<b>Angola (accession)</b>	4.X.2001	4.X.2002
<b>Antigua and Barbuda (accession)</b>	14.VI.2000	14.VI.2001
<b>Argentina (accession)<sup>2</sup></b>	13.X.2000	13.X.2001
<b>Australia (accession)</b>	9.X.1995	9.X.1996
<b>Azerbaijan (accession)</b>	16.VII.2004	16.VII.2005
<b>Bahamas (accession)</b>	1.IV.1997	1.IV.1998
<b>Bahrain (accession)</b>	3.V.1996	3.V.1997
<b>Barbados (accession)</b>	7.VII.1998	7.VII.1999
<b>Belgium (accession)</b>	6.X.1998	6.X.1999
<b>Belize (accession)</b>	27.XI.1998	27.XI.1999
<b>Benin (accession)</b>	5.II.2010	5.II.2011
<b>Brunei Darussalam (accession)</b>	31.I.2002	31.I.2003
<b>Bulgaria (accession)</b>	28.XI.2003	28.XI.2004
<b>Cambodia (accession)</b>	8.VI.2001	8.VI.2002
<b>Cameroon (accession)</b>	15.X.2001	15.X.2002
<b>Canada (accession)</b>	29.V.1998	29.V.1999
<b>Cape Verde (accession)</b>	4.VII.2003	4.VII.2004
<b>Chile (accession)</b>	29.V.2002	29.V.2003
<b>China (accession)<sup>1, 4</sup></b>	5.I.1999	5.I.2000
<b>Colombia (accession)</b>	19.XI.2001	19.XI.2002
<b>Comoros (accession)</b>	5.I.2000	5.I.2001
<b>Congo (accession)</b>	7.VIII.2002	7.VIII.2003
<b>Cook Islands (accession)</b>	12.III.2007	12.III.2008
<b>Côte d'Ivoire (accession)</b>	8.VII.2013	8.VII.2014
<b>Croatia (accession)</b>	12.I.1998	12.I.1999
<b>Cyprus (accession)</b>	12.V.1997	12.V.1998
<b>Denmark (ratification)</b>	30.V.1995	30.V.1996
<b>Djibouti (accession)</b>	8.I.2001	8.I.2002
<b>Dominica (accession)</b>	31.VIII.2001	31.VIII.2002
<b>Dominican Republic (accession)</b>	24.VI.1999	24.VI.2000

*CLC Protocol 1992*

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Ecuador (accession)</b>	11.XII.2007	11.XII.2008
<b>Egypt (accession)</b>	21.IV.1995	30.V.1996
<b>El Salvador (accession)</b>	2.I.2002	2.I.2003
<b>Estonia (accession)</b>	6.VII.2004	6.VII.2005
<b>Fiji (accession)</b>	30.XI.1999	30.XI.2000
<b>Finland (acceptance)</b>	24.XI.1995	24.XI.1996
<b>France (approval)</b>	29.IX.1994	30.V.1996
<b>Gabon (accession)</b>	31.V.2002	31.V.2003
<b>Georgia (accession)</b>	18.IV.2000	18.IV.2001
<b>Germany (ratification)<sup>1</sup></b>	29.IX.1994	30.V.1996
<b>Ghana (accession)</b>	3.II.2003	3.II.2004
<b>Greece (ratification)</b>	9.X.1995	9.X.1996
<b>Grenada (accession)</b>	7.I.1998	7.I.1999
<b>Guatemala (accession)</b>	2.VIII.2016	2.VIII.2017
<b>Guinea (accession)</b>	2.X.2002	2.X.2003
<b>Hungary (accession)</b>	30.III.2007	30.III.2008
<b>Iceland (accession)</b>	13.XI.1998	13.XI.1999
<b>India (accession)</b>	15.XI.1999	15.XI.2000
<b>Indonesia (accession)</b>	6.VII.1999	6.VII.2000
<b>Iran, Islamic Republic of (accession)</b>	24.X.2007	24.X.2008
<b>Ireland (accession)<sup>2</sup></b>	15.V.1997	16.V.1998
<b>Israel (accession)</b>	21.X.2004	21.X.2005
<b>Italy (accession)</b>	16.IX.1999	16.IX.2000
<b>Jamaica (accession)</b>	6.VI.1997	6.VI.1998
<b>Japan (accession)</b>	24.VIII.1994	30.V.1996
<b>Jordan (accession)</b>	27.V.2015	27.V.2016
<b>Kenya (accession)</b>	2.II.2000	2.II.2001
<b>Kiribati (accession)</b>	5.II.2007	5.II.2008
<b>Kuwait (accession)</b>	16.IV.2004	16.IV.2005
<b>Latvia (accession)</b>	9.III.1998	9.III.1999
<b>Lebanon (accession)</b>	30.III.2005	30.III.2006
<b>Liberia (accession)</b>	5.X.1995	5.X.1996
<b>Lithuania (accession)</b>	27.VI.2000	27.VI.2001
<b>Luxembourg (accession)</b>	21.XI.2005	21.XI.2006
<b>Madagascar (accession)</b>	21.V.2002	21.V.2003
<b>Malaysia (accession)</b>	9.VI.2004	9.VI.2005
<b>Maldives (accession)</b>	20.V.2005	20.V.2006
<b>Malta (accession)</b>	6.I.2000	6.I.2001
<b>Marshall Islands (accession)</b>	16.X.1995	16.X.1996
<b>Mauritania (accession)</b>	4.V.2012	4.V.2013
<b>Mauritius (accession)</b>	6.XII.1999	6.XII.2000
<b>Mexico (accession)</b>	13.V.1994	30.V.1996
<b>Moldova (accession)</b>	11.X.2005	11.X.2006
<b>Monaco (ratification)</b>	8.XI.1996	8.XI.1997
<b>Mongolia (accession)</b>	8.VIII.2008	8.VIII.2009
<b>Montenegro (accession)</b>	29.XI.2011	29.XI.2012

*CLC Protocol 1992*

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Morocco (ratification)</b>	22.VIII.2000	22.VIII.2001
<b>Mozambique (accession)</b>	26.IV.2002	26.IV.2003
<b>Myanmar (accession)</b>	12.VII.2016	12.VII.2017
<b>Namibia (accession)</b>	18.XII.2002	18.XII.2003
<b>Netherlands (accession)<sup>5, 6</sup></b>	15.XI.1996	15.XI.1997
<b>New Zealand (accession)<sup>2</sup></b>	25.VI.1998	25.VI.1999
<b>Nicaragua (accession)</b>	4.IV.2014	4.IV.2015
<b>Nigeria (accession)</b>	24.V.2002	24.V.2003
<b>Niue (accession)</b>	27.VI.2012	27.VI.2013
<b>Norway (ratification)</b>	3.IV.1995	30.V.1996
<b>Oman (accession)</b>	8.VII.1994	30.V.1996
<b>Pakistan (accession)</b>	2.III.2005	2.III.2006
<b>Palau (accession)</b>	29.IX.2011	29.IX.2012
<b>Panama (accession)</b>	18.III.1999	18.III.2000
<b>Papua New Guinea (accession)</b>	23.I.2001	23.I.2002
<b>Peru (accession)</b>	1.IX.2005	1.IX.2006
<b>Philippines (accession)</b>	7.VII.1997	7.VII.1998
<b>Poland (accession)</b>	21.XII.1999	21.XII.2000
<b>Portugal (accession)</b>	13.XI.2001	13.XI.2002
<b>Qatar (accession)</b>	20.XI.2001	20.XI.2002
<b>Republic of Korea (accession)<sup>2</sup></b>	7.III.1997	16.V.1998
<b>Romania (accession)</b>	27.XI.2000	27.XI.2001
<b>Russian Federation (accession)</b>	20.III.2000	20.III.2001
<b>Saudi Arabia (accession)</b>	203.V.2005	23.V.2006
<b>Samoa (accession)</b>	1.II.2002	1.II.2003
<b>St. Kitts and Nevis (accession)</b>	7.X.2004	7.X.2005
<b>St. Lucia (accession)</b>	20.V.2004	20.V.2005
<b>St. Vincent and the Grenadines (accession)</b>	9.X.2001	9.X.2002
<b>Senegal (accession)</b>	2.VIII.2011	2.VIII.2012
<b>Serbia (accession)</b>	25.V.2011	25.V.2012
<b>Seychelles (accession)</b>	23.VII.1999	23.VII.2000
<b>Sierra Leone (accession)</b>	4.VI.2001	4.VI.2002
<b>Singapore (accession)</b>	18.IX.1997	18.IX.1998
<b>Slovakia (accession)</b>	8.VII.2013	8.VII.2014
<b>Slovenia (accession)</b>	19.VII.2000	19.VII.2001
<b>Solomon Island (accession)</b>	30.VI.2004	30.VI.2005
<b>South Africa (accession)</b>	1.X.2004	1.X.2005
<b>Spain (accession)</b>	6.VII.1995	6.VII.1996
<b>Sri Lanka (accession)</b>	22.I.1999	22.I.2000
<b>Sweden (ratification)</b>	25.V.1995	30.V.1996
<b>Switzerland (accession)</b>	4.VII.1996	4.VII.1997
<b>Syria (accession)<sup>2</sup></b>	22.II.2005	22.II.2006
<b>Togo (accession)</b>	23.IV.2012	23.IV.2013
<b>Tonga (accession)</b>	10.XII.1999	10.XII.2000
<b>Trinidad and Tobago (accession)</b>	6.III.2000	6.III.2001
<b>Tunisia (accession)</b>	29.I.1997	29.I.1998

*CLC Protocol 1992*

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Turkey (accession)<sup>2</sup></b>	17.VIII.2001	17.VIII.2002
<b>Turkmenistan (accession)</b>	21.IX.2009	21.IX.2010
<b>Tuvalu (accession)</b>	30.VI.2004	30.VI.2005
<b>Ukraine (accession)</b>	29.XI.2007	29.XI.2008
<b>United Arab Emirates (accession)</b>	19.XI.1997	19.XI.1998
<b>United Kingdom (accession)<sup>3</sup></b>	29.IX.1994	30.V.1996
<b>United Republic of Tanzania (accession)</b>	19.XI.2002	19.XI.2003
<b>Uruguay (accession)</b>	9.VII.1997	9.VII.1998
<b>Vanuatu (accession)</b>	18.II.1999	18.II.2000
<b>Venezuela (accession)</b>	22.VII.1998	22.VII.1999
<b>Viet Nam (accession)</b>	17.VI.2003	17.VI.2004
<b>Yemen (accession)</b>	20.IX.2006	20.IX.2007

Number of Contracting States: 133

<sup>1</sup> China declared that the Protocol will also be applicable to the Hong Kong Special Administrative Region.

<sup>2</sup> With a declaration.

<sup>3</sup> The United Kingdom declared its accession to be effective in respect of:

The Bailiwick of Jersey

The Isle of Man

Falkland Islands\*

Montserrat

South Georgia and the South Sandwich Islands

Anguilla )

Bailiwick of Guernsey )

Bermuda )

British Antarctic Territory )

British Indian Ocean Territory )

Pitcairn, Henderson,

Ducie and Oeno Islands )

Sovereign Base Areas of

Akrotiri and Dhekelia on Cyprus )

Turks & Caicos Islands )

Virgin Islands )

Cayman Islands )

Gibraltar )

St Helena and its Dependencies )

) with effect from 20.2.98

) with effect from 15.5.98

<sup>4</sup> Applies to the Macau Special Administrative Region with effect from 24 June 2005.

<sup>5</sup> Applies to the Netherlands Antilles with effect from 21 December 2005.

<sup>6</sup> Applies to Aruba with effect from 12 April 2006.

\* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

*Intervention 1969***Declarations, Reservations and Statements****Germany**

The instrument of ratification of Germany was accompanied by the following declaration:

“The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992.”

**New Zealand**

The instrument of accession of New Zealand contained the following declaration:

“And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zealand with the Depositary”.

**International Convention  
relating to  
Intervention on the  
high seas in cases of  
oil pollution  
casualties, 1969**

**(Intervention 1969)**

Done at Brussels,  
29 November 1969  
Entry into force: 6 May 1975

**Convention Internationale  
sur  
L'intervention en haute  
mer en cas d'accident  
entraînant ou pouvant  
entraîner une pollution par  
les hydrocarbures, 1969**

**(Intervention 1969)**

Signé a Bruxelles  
le 29 Novembre 1969  
Entrée en vigueur: 6 Mai 1975

	<b>Date of signature or deposit of of instrument</b>	<b>Date of entry into force or succession</b>
<b>Algeria (accession)</b>	21.XI.2011	19.II.2012
<b>Angola (accession)</b>	4.X.2001	2.I.2002
<b>Argentina (accession)<sup>1</sup></b>	21.IV.1987	20.VII.1987
<b>Australia (ratification)<sup>1</sup></b>	7.XI.1983	5.II.1984
<b>Bahamas (accession)</b>	22.VII.1976	20.X.1976
<b>Bangladesh (accession)</b>	6.XI.1981	4.II.1982
<b>Barbados (accession)</b>	6.V.1994	4.VIII.1994
<b>Belgium (ratification)</b>	21.X.1971	6.V.1975
<b>Benin (accession)</b>	1.XI.1985	30.I.1986
<b>Brazil (ratification)</b>	18.I.2008	17.IV.2008

*Intervention 1969*

	Date of signature or deposit of of instrument	Date of entry into force or succession
<b>Bulgaria (accession)<sup>1</sup></b>	2.XI.1983	31.I.1984
<b>Cameroon (ratification)<sup>1</sup></b>	14.V.1984	12.VIII.1984
<b>Chile (accession)</b>	28.II.1995	29.V.1995
<b>China (accession)<sup>4, 5</sup></b>	23.II.1990	24.V.1990
<b>Congo (accession)</b>	19.V.2014	17.VIII.2014
<b>Côte d'Ivoire (ratification)</b>	8.I.1988	7.IV.1988
<b>Croatia (succession)</b>	—	8.X.1991
<b>Cuba (accession)<sup>1</sup></b>	5.V.1976	3.VIII.1976
<b>Denmark (signature)</b>	18.XII.1970	6.V.1975
<b>Djibouti (accession)</b>	1.III.1990	30.V.1990
<b>Dominican Republic (ratification)</b>	5.II.1975	6.V.1975
<b>Ecuador (accession)</b>	23.XII.1976	23.III.1977
<b>Egypt (accession)</b>	3.II.1989	4.V.1989
<b>Equatorial Guinea (accession)</b>	24.IV.1996	23.VII.1996
<b>Estonia (accession)</b>	16.V.2008	14.VIII.2008
<b>Fiji (accession)</b>	15.VIII.1972	6.V.1975
<b>Finland (ratification)</b>	6.IX.1976	5.XII.1976
<b>France (ratification)</b>	10.IV.1972	6.IV.1975
<b>Gabon (accession)</b>	21.I.1982	21.IV.1982
<b>Georgia (accession)</b>	25.VIII.1995	23.XI.1995
<b>Germany (ratification)<sup>1,2</sup></b>	7.V.1975	5.VIII.1975
<b>Ghana (ratification)</b>	20.IV.1978	19.VII.1978
<b>Guyana (accession)</b>	10.XII.1997	10.III.1998
<b>Iceland (ratification)</b>	17.VII.1980	15.X.1980
<b>India (accession)</b>	16.VI.2000	14.IX.2000
<b>Ireland (ratification)</b>	21.VIII.1980	19.XI.1980
<b>Iran (Islamic Republic of) (accession)</b>	25.VII.1997	23.X.1997
<b>Italy (ratification)</b>	27.II.1979	28.V.1979
<b>Jamaica (accession)</b>	13.III.1991	11.VI.1991
<b>Japan (acceptance)</b>	6.IV.1971	6.V.1975
<b>Kuwait (accession)</b>	2.IV.1981	1.VII.1981
<b>Latvia (accession)</b>	9.VIII.2001	7.IX.2001
<b>Lebanon (accession)</b>	5.VI.1975	3.IX.1975
<b>Liberia (accession)</b>	25.IX.1972	6.V.1975
<b>Marshall Islands (accession)</b>	16.X.1995	14.I.1996
<b>Mauritania (accession)</b>	24.XI.1997	22.II.1998
<b>Mauritius (accession)</b>	17.XII.2002	17.III.2003
<b>Mexico (accession)</b>	8.IV.1976	7.VII.1976
<b>Monaco (ratification)</b>	24.II.1975	6.V.1975
<b>Montenegro (succession)</b>	—	3.VI.2006
<b>Morocco (accession)</b>	11.IV.1974	6.V.1975
<b>Namibia (accession)</b>	12.III.2004	10.VI.2004
<b>Netherlands (ratification)</b>	19.IX.1975	18.XII.1975
<b>New Zealand (accession)</b>	26.III.1975	6.V.1975
<b>Nicaragua (accession)</b>	15.XI.1994	13.II.1995



*Intervention 1969*

	Date of signature or deposit of of instrument	Date of entry into force or succession
<b>Nigeria (accession)</b>	24.II.2004	24.V.2004
<b>Norway (accession)</b>	12.VII.1972	6.V.1975
<b>Oman (accession)</b>	24.I.1985	24.IV.1985
<b>Pakistan (accession)</b>	13.I.1995	13.IV.1995
<b>Panama (ratification)</b>	7.I.1976	6.IV.1976
<b>Papua New Guinea (accession)</b>	12.III.1980	10.VI.1980
<b>Poland (ratification)</b>	1.VI.1976	30.VIII.1976
<b>Portugal (ratification)</b>	15.II.1980	15.V.1980
<b>Qatar (accession)</b>	2.VI.1988	31.VIII.1988
<b>Russian Federation (accession)<sup>1,3</sup></b>	30.XII.1974	6.V.1975
<b>St. Kitts and Nevis (accession)</b>	7.X.2004	5.I.2005
<b>St. Lucia (accession)</b>	20.V.2004	18.VIII.2004
<b>St. Vincent &amp; the Grenadines (accession)</b>	12.V.1999	10.VIII.1999
<b>Senegal (accession)</b>	27.III.1972	6.V.1975
<b>Serbia (succession)</b>	—	27.IV.1992
<b>Slovenia (succession)</b>	—	25.VI.1991
<b>South Africa (accession)</b>	1.VII.1986	29.IX.1986
<b>Spain (ratification)</b>	8.XI.1973	6.V.1975
<b>Sri Lanka (accession)</b>	12.IV.1983	11.VII.1983
<b>Suriname (succession)</b>	—	25.XI.1975
<b>Sweden (acceptance)</b>	8.II.1973	6.IV.1975
<b>Switzerland (ratification)</b>	15.XII.1987	14.III.1988
<b>Syrian Arab Republic (accession)<sup>1</sup></b>	6.II.1975	6.V.1975
<b>Tanzania (accession)</b>	16.V.2006	14.VIII.2006
<b>Togo (accession)</b>	10.X.2016	8.I.2017
<b>Tonga (accession)</b>	1.II.1996	1.V.1996
<b>United Republic of Tanzania (accession)</b>	16.V.2006	14.VIII.2006
<b>Trinidad and Tobago (accession)</b>	6.III.2000	4.VI.2000
<b>Tunisia (accession)</b>	4.V.1976	2.VIII.1976
<b>Ukraine (succession)</b>	—	17.XII.1993
<b>United Arab Emirates (accession)</b>	15.XII.1983	14.III.1984
<b>United Kingdom (ratification)</b>	12.I.1971	6.V.1975
<b>United States (ratification)</b>	21.II.1974	6.V.1975
<b>Vanuatu (accession)</b>	14.IX.1992	13.XII.1992
<b>Yemen (accession)</b>	6.III.1979	4.VI.1979

Number of Contracting States: 89

<sup>1</sup> With a declaration, reservation or statement

<sup>2</sup> On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded<sup>1</sup> to the Convention on 21 December 1978.

<sup>3</sup> As from 26 December 1991, the membership of the USSR in the Convention is continued by the Russian Federation.

<sup>4</sup> Applies to the Hong Kong Special Administrative Region with effect from 1 July 1997.

*Intervention 1969*

<sup>5</sup> Applies to the Macau Special Administrative Region with effect from 24 June 2005.

The United Kingdom notified the depositary that it extended the Convention to the following territories:

Hong Kong*	12.XI.1974	6.V.1975
Bermuda	19.IX.1980	1.XII.1980
Anguilla	)	
British Antarctic Territory**	)	
British Virgin Islands	)	8.IX.1982
Cayman Islands	)	
Falkland Islands and Dependencies**	)	
Montserrat	)	
Pitcairn, Henderson, Ducie and Oeno Islands	)	
St. Helena and Dependencies	)	
Turks and Caicos Islands	)	8.IX.1982
United Kingdom Sovereign Base Areas of Akrotiri and	)	8.IX.1982
Dhekelia on the Island of Cyprus	)	
Isle of Man	)	27.VI.1995

The United States notified the depositary that it extended the Convention to the following territories:

Puerto Rico, Guam, Canal Zone,	)	
Virgin Islands, American Samoa,	)	9.IX.1975
Trust Territories of the Pacific Islands	)	6.V.1975

The Netherlands notified the depositary that it extended the Convention to the following territories:

Suriname***, Netherlands Antilles	19.IX.1975	18.XII.1975
Aruba (with effect from 1 January 1986)	—	—

\* Ceased to apply to Hong Kong with effect from 1 July 1997.

\*\* The depositary received the following communication dated 12 August 1986 from the Argentine delegation to the International Maritime Organization:

*[Translation]*

“... the Argentine Government rejects the extension made by the United Kingdom of Great Britain and Northern Ireland of the application to the Malvinas Islands, South Georgia and South Sandwich Islands of the ... International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties ... and reaffirms the rights of sovereignty of the Argentine Republic over those archipelagos which form part of its national territory.

“The General Assembly of the United Nations has adopted resolutions 2065(XX), 3160(XXVIII), 31/49, 37/9, 38/12 and 39/6 which recognize the existence of a sovereignty dispute relating to the question of the Malvinas Islands, urging the Argentine Republic and the United Kingdom to resume negotiations in order to find, as soon as possible, a peaceful and definitive solution to the dispute through the good offices of the Secretary-General of the United Nations who is requested to inform the General Assembly on the progress made. Similarly, the General Assembly of the United Nations at its fortieth session adopted resolution 40/21 of 27 November 1985 which again urges both parties to resume the said negotiations.

“... the Argentine Government also rejects the extension of its application to the so-called “British Antarctic Territory” made by the United Kingdom of Great Britain and Northern Ireland and, with respect to such extension and to any other declaration that

*Intervention Prot. 1973*

may be made, reaffirms the rights of the Republic over the Argentine Antarctic Sector between longitude 25° and 74° west and latitude 60° south, including those rights relating to its sovereignty or corresponding maritime jurisdiction. It also recalls the safeguards concerning claims to territorial sovereignty in Antarctica provided in article IV of the Antarctic Treaty signed at Washington on 1 December 1959 to which the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland are Parties.”

The depositary received the following communication dated 3 February 1987 from the United Kingdom Foreign and Commonwealth Office:

“The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the statement made by the Argentine Republic as regards the Falkland Islands and South Georgia and the South Sandwich Islands. The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and South Georgia and the South Sandwich Islands and, accordingly, their right to extend the application of the Treaties to the Falkland Islands and South Georgia and the South Sandwich Islands.

“Equally, while noting the Argentine reference to the provisions of Article IV of the Antarctic Treaty signed at Washington on 1 December 1959, the Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the sovereignty of the United Kingdom over the British Antarctic Territory, and to the right to extend the application of the Treaties in question to that Territory.”

\*\*\* Has since become the independent State of Suriname and a Contracting State to the Convention.

**Protocol relating to  
Intervention on the high seas  
in cases of pollution by  
substances other than oil,  
1973, as amended**

**(Intervention Prot. 1973)**

Done at London, 2 November 1973  
Entry into force: 30 March 1983

**Protocole de 1973 sur  
L'intervention en haute mer  
en cas de pollution par des  
substances autres  
que les hydrocarbures**

**(Intervention Prot. 1973)**

Signé à London le 2 Novembre 1973  
Entrée en vigueur: 30 Mars 1983

	<b>Date of deposit of instrument</b>	<b>Date of entry into force or succession</b>
<b>Algeria (accession)</b>	21.XI.2011	19.II.2012
<b>Australia (accession)<sup>1</sup></b>	7.XI.1983	5.II.1984
<b>Bahamas (accession)</b>	5.III.1981	30.III.1983
<b>Barbados (accession)</b>	6.V.1994	4.VIII.1994
<b>Belgium (ratification)</b>	9.IX.1982	30.III.1983
<b>Brazil (accession)</b>	18.I.2008	17.IV.2008
<b>Bulgaria (accession)</b>	21.XI.2006	19.II.2007
<b>Chile (accession)</b>	28.II.1995	29.V.1995
<b>China (accession)<sup>2, 3</sup></b>	23.II.1990	24.V.1990
<b>Congo (accession)</b>	19.V.2014	17.VIII.2014

*Intervention Prot. 1973*

	Date of deposit of instrument	Date of entry into force or succession
Croatia (succession)	—	8.X.1991
Denmark (signature)	9.V.1983	7.VIII.1983
Egypt (accession)	3.II.1989	4.V.1989
Estonia (accession)	16.V.2008	14.VIII.2008
Finland (ratification)	4.VIII.1986	2.XI.1986
France (accession) <sup>1</sup>	31.XII.1985	31.III.1986
Georgia (accession)	25.VIII.1995	23.XI.1995
Germany (ratification) <sup>1</sup>	21.VIII.1985	19.XI.1985
Iran (Islamic Republic of) (accession)	25.VII.1997	23.X.1997
Ireland (accession)	6.I.1995	6.IV.1995
Italy (ratification)	1.X.1982	30.III.1983
Jamaica (accession)	13.III.1991	11.VI.1991
Latvia (accession)	9.VIII.2001	7.IX.2001
Liberia (accession)	17.II.1981	30.III.1983
Marshall Islands (accession)	16.X.1995	14.I.1996
Mauritania (accession)	24.XI.1997	22.II.1998
Mauritius (accession)	6.XI.2003	4.II.2004
Mexico (accession)	11.IV.1980	30.III.1983
Monaco (accession)	31.III.2005	29.VI.2005
Montenegro (succession)	—	3.VI.2006
Morocco (accession)	30.I.2001	30.IV.2001
Namibia (accession)	12.III.2004	10.VI.2004
Netherlands (ratification)	10.IX.1980	30.III.1983
New Zealand (ratification)	4.IV.2014	3.VII.2014
Nicaragua (accession)	15.XI.1994	13.II.1995
Norway (accession)	15.VII.1980	30.III.1983
Oman (accession)	24.I.1985	24.IV.1985
Pakistan (accession)	13.I.1995	13.IV.1995
Poland (ratification)	10.VII.1981	30.III.1983
Portugal (accession)	8.VII.1987	6.X.1987
Russian Federation (acceptance) <sup>4</sup>	30.XII.1982	30.III.1983
Serbia (succession) <sup>5, 6</sup>	—	3.VI.2006
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent & the Grenadines (accession)	12.V.1999	10.VIII.1999
Slovenia (succession)	---	25.VI.1991
South Africa (accession)	25.IX.1997	24.XII.1997
Spain (accession)	14.III.1994	12.VI.1994
Sweden (ratification)	28.VI.1976	30.III.1983
Switzerland (accession)	15.XII.1987	14.III.1988
Tanzania (accession)	23.XI.2006	21.II.2007
Togo (accession)	10.X.2016	8.I.2017
Tonga (accession)	1.II.1996	1.V.1996
Tunisia (accession)	4.V.1976	30.III.1983
United Kingdom (ratification) <sup>1</sup>	5.XI.1979	30.III.1983
United States (ratification)	7.IX.1978	30.III.1983

*Intervention Prot. 1973*

	<b>Date of deposit of instrument</b>	<b>Date of entry into force or succession</b>
<b>Vanuatu (accession)</b>	14.IX.1992	13.XII.1992
<b>Yemen (accession)</b>	6.III.1979	30.III.1983

Number of Contracting States: 57

<sup>1</sup> With a declaration or reservation.

<sup>2</sup> Applies to the Hong Kong Special Administrative Region with effect from 1 July 1997.

<sup>3</sup> Applies to the Macao Special Administrative Region with effect from 24 June 2005.

<sup>4</sup> As from 26 December 1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

<sup>5</sup> As from 4 February 2003, the name of the State of the Federal Republic of Yugoslavia was changed to Serbia and Montenegro. The date of succession by Serbia and Montenegro to the Protocol is the date on which the Federal Republic of Yugoslavia assumed responsibility for its international relations.

<sup>6</sup> Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Protocol with effect from the same date, i.e. 3 June 2006.

The United Kingdom declared ratification to be effective also in respect of:

Anguilla	)	
Bermuda	)	
British Antarctic Territory*	)	
British Virgin Islands	)	
Cayman Islands	)	
Falkland Islands and Dependencies*	)	
Hong Kong**	)	
Montserrat	)	30.III.1983
Pitcairn, Henderson, Ducie and Oeno Islands	)	
St. Helena and Dependencies	)	
Turks and Caicos Islands	)	
United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus	)	
Isle of Man	)	27.VI.1995

The Netherlands declared ratification to be effective also in respect of:

Netherlands Antilles	)	30.III. 1983
Aruba (with effect from 1 January 1986)	)	

\* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

\*\* Ceased to apply to Hong Kong with effect from 1 July 1997.

*Fund 1971**Fonds 1971*

**International Convention  
on the  
Establishment of  
an International Fund  
for compensation  
for oil pollution damage**

(FUND 1971)

Done at Brussels, 18 December 1971  
Entered into force: 16 October 1978

**Convention Internationale  
portant  
Création d'un Fonds  
International  
d'indemnisation pour les  
dommages dus à la pollution  
par les hydrocarbures**

(FONDS 1971)

Signée à Bruxelles, le 18 décembre 1971  
Entrée en vigueur: 16 octobre 1978

Cessation: 2.XII.2002

## Contracting States at time of cessation of Convention

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	
Algeria (ratification)	2.VI.1975	16.X.1978	3.VIII.1999
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	14.VI.2001
Australia (accession)	10.X.1994	8.I.1995	15.V.1998
Bahamas (accession)	22.VII.1976	16.X.1978	15.V.1998
Bahrain (accession)	3.V.1996	1.VIII.1996	15.V.1998
Barbados (accession)	6.V.1994	4.VIII.1994	7.VII.1999
Belgium (ratification)	1.XII.1994	1.III.1995	6.X.1999
Benin (accession)	1.XI.1985	30.I.1986	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	31.I.2003
Cameroon (accession)	14.V.1984	12.VIII.1984	15.X.2002
Canada (accession) <sup>1</sup>	24.I.1989	24.IV.1989	29.V.1999
China <sup>2</sup>	—	1.VII.1997	5.I.2000
Colombia (accession)	13.III.1997	11.VI.1997	25.I.2006
Côte d'Ivoire (accession)	5.X.1987	3.I.1988	
Croatia (succession)	—	8.X.1991	30.VII.1999
Cyprus (accession)	26.VII.1989	24.X.1989	15.V.1998
Denmark (accession)	2.IV.1975	16.X.1978	15.V.1998
Djibouti (accession)	1.III.1990	30.V.1990	17.V.2002
Estonia (accession)	1.XII.1992	1.III.1993	
Fiji (accession)	4.III.1983	2.VI.1983	30.XI.2000
Finland (ratification)	10.X.1980	8.I.1981	15.V.1998
France (accession)	11.V.1978	16.X.1978	15.V.1998
Gabon (accession)	21.I.1982	21.IV.1982	31.V.2003
Gambia (accession)	1.XI.1991	30.I.1992	
Germany (ratification) <sup>1</sup>	30.XII.1976	16.X.1978	15.V.1998

*Fund 1971**Fonds 1971*

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
<b>Ghana (ratification)</b>	20.IV.1978	16.X.1978	
<b>Greece (accession)</b>	16.XII.1986	16.III.1987	15.V.1998
<b>Guyana (accession)</b>	10.XII.1997	10.III.1998	
<b>Iceland (accession)</b>	17.VII.1980	15.X.1980	10.II.2001
<b>India (accession)</b>	10.VII.1990	8.X.1990	21.VI.2001
<b>Indonesia (accession)</b>	1.IX.1978	30.XI.1978	26.VI.1999
<b>Ireland (ratification)</b>	19.XI.1992	17.II.1993	15.V.1998
<b>Italy (accession)</b>	27.II.1979	28.V.1979	8.X.2000
<b>Japan (ratification)</b>	7.VII.1976	16.X.1978	15.V.1998
<b>Kenya (accession)</b>	15.XII.1992	15.III.1993	7.VII.2001
<b>Kuwait (accession)</b>	2.IV.1981	1.VII.1981	
<b>Liberia (accession)</b>	25.IX.1972	16.X.1978	15.V.1998
<b>Malaysia (accession)</b>	6.I.1995	6.IV.1995	
<b>Maldives (accession)</b>	16.III.1981	14.VI.1981	
<b>Malta (accession)</b>	27.IX.1991	26.XII.1991	6.I.2001
<b>Marshall Islands (accession)</b>	30.XI.1994	28.II.1995	15.V.1998
<b>Mauritania (accession)</b>	17.XI.1995	15.II.1996	
<b>Mauritius (accession)</b>	6.IV.1995	5.VII.1995	6.XII.2000
<b>Mexico (accession)</b>	13.V.1994	11.VIII.1994	15.V.1998
<b>Monaco (accession)</b>	23.VIII.1979	21.XI.1979	15.V.1998
<b>Morocco (accession)</b>	31.XII.1992	31.III.1993	25.X.2001
<b>Mozambique (accession)</b>	23.XII.1996	23.III.1997	26.IV.2003
<b>Netherlands (approval)</b>	3.VIII.1982	1.XI.1982	15.V.1998
<b>New Zealand (accession)<sup>3</sup></b>	22.XI.1996	20.II.1997	25.VI.1999
<b>Nigeria (accession)</b>	11.IX.1987	10.XII.1987	24.V.2003
<b>Norway (ratification)</b>	21.III.1975	16.X.1978	15.V.1998
<b>Oman (accession)</b>	10.V.1985	8.VIII.1985	15.V.1998
<b>Panama (accession)</b>	18.III.1999	16.VI.1999	11.V.2000
<b>Papua New Guinea (accession)</b>	12.III.1980	10.VI.1980	23.I.2002
<b>Poland (ratification)</b>	16.IX.1985	15.XII.1985	21.XII.2000
<b>Portugal (ratification)</b>	11.IX.1985	10.XII.1985	
<b>Qatar (accession)</b>	2.VI.1988	31.VIII.1988	20.XI.2002
<b>Republic of Korea (accession)</b>	8.XII.1992	8.III.1993	15.V.1998
<b>Russian Federation (accession)<sup>4</sup></b>	17.VI.1987	15.IX.1987	20.III.2001
<b>Saint Kitts and Nevis (accession)</b>	14.IX.1994	13.XII.1994	
<b>Seychelles (accession)</b>	12.IV.1988	11.VII.1988	23.VII.2000
<b>Sierra Leone (accession)</b>	13.VIII.1993	11.XI.1993	4.VI.2002
<b>Slovenia (succession)</b>	—	25.VI.1991	19.VII.2001
<b>Spain (accession)</b>	8.X.1981	6.I.1982	15.V.1998
<b>Sri Lanka (accession)</b>	12.IV.1983	11.VII.1983	22.I.2000
<b>Sweden (ratification)</b>	17.III.1975	16.X.1978	15.V.1998
<b>Switzerland (ratification)</b>	4.VII.1996	2.X.1996	15.V.1998
<b>Syrian Arab Republic (accession)<sup>1</sup></b>	6.II.1975	16.X.1978	24.IV.2009
<b>Tonga (accession)</b>	1.II.1996	1.V.1996	10.XII.2000
<b>Tunisia (accession)</b>	4.V.1976	16.X.1978	15.V.1998

*Fund 1971**Fonds 1971*

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
<b>Tuvalu (succession)</b>	—	16.X.1978	
<b>United Arab Emirates (accession)</b>	15.XII.1983	14.III.1984	24.V.2002
<b>United Kingdom (ratification)</b>	2.IV.1976	16.X.1978	15.V.1998
<b>Vanuatu (accession)</b>	13.I.1989	13.IV.1989	18.II.2000
<b>Venezuela (accession)</b>	21.I.1992	20.IV.1992	22.VII.1999
<b>Yugoslavia (ratification)</b>	16.III.1978	16.X.1978	

Number of Contracting States: 14

Upon the entry into force of the 2000 Protocol to the FUND 1971 Convention, the Convention ceased when the number of Contracting States fell below 25.

<sup>1</sup> With a declaration, reservation or statement.

<sup>2</sup> Applies only to the Hong Kong Special Administrative Region.

<sup>3</sup> Accession by New Zealand was declared not to extend to Tokelau.

<sup>4</sup> As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

### Declarations, Reservations and Statements

#### Canada

The instrument of accession of Canada was accompanied by the following declaration (in the English and French languages):

“The Government of Canada assumes responsibility for the payment of the obligations contained in articles 10, 11 and 12 of the Fund Convention. Such payments to be made in accordance with section 774 of the Canada Shipping Act as amended by Chapter 7 of the Statutes of Canada 1987”.

#### Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the English language):

“that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.”

#### Syrian Arab Republic

The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):

[Translation]

“...the accession of the Syrian Arab Republic to this Convention ... in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention.”



*Fund Protocol 1976**Protocole Fonds 1976*

**Protocol to the International  
Convention on the  
Establishment  
of an International Fund  
for compensation  
for oil pollution damage**

**(FUND PROT 1976)**

Done at London, 19 November 1976  
Entered into force:  
22 November 1994

**Protocole à la Convention  
Internationale portant  
Creation d'un Fonds  
International  
d'indemnisation pour les  
dommages dus à la pollution  
par les hydrocarbures**

**(FONDS PROT 1976)**

Signé a Londres, le 19 novembre 1976  
Entré en vigueur:  
22 Novembre 1994

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Albania (accession)	6.IV.1994	22.XI.1994	
Australia (accession)	10.X.1994	8.I.1995	
Bahamas (acceptance)	3.III.1980	22.XI.1994	
Bahrain (accession)	3.V.1996	1.VIII.1996	
Barbados (accession)	6.V.1994	22.XI.1994	
Belgium (accession)	1.XII.1994	1.III.1995	
Canada (accession)	21.II.1995	22.V.1995	
China <sup>3</sup>	—	1.VII.1997	22.VIII.2003
Colombia (accession)	13.III.1997	11.VI.1997	25.I.2006
Cyprus (accession)	26.VII.1989	22.XI.1994	
Denmark (accession)	3.VI.1981	22.XI.1994	
Finland (accession)	8.I.1981	22.XI.1994	
France (accession)	7.XI.1980	22.XI.1994	
Germany (ratification) <sup>1</sup>	28.VIII.1980	22.XI.1994	
Greece (accession)	9.X.1995	7.I.1996	
Iceland (accession)	24.III.1994	22.XI.1994	
India (accession)	10.VII.1990	22.XI.1994	
Ireland (accession)	19.XI.1992	22.XI.1994	15.V.1998
Italy (accession)	21.IX.1983	22.XI.1994	
Japan (accession)	24.VIII.1994	22.XI.1994	
Liberia (accession)	17.II.1981	22.XI.1994	
Malta (accession)	27.IX.1991	22.XI.1994	6.I.2001
Marshall Islands (accession)	16.X.1995	14.I.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	
Mexico (accession)	13.V.1994	22.XI.1994	
Morocco (accession)	31.XII.1992	22.XI.1994	
Netherlands (accession)	1.XI.1982	22.XI.1994	
Norway (accession)	17.VII.1978	22.XI.1994	
Poland (accession) <sup>1</sup>	30.X.1985	22.XI.1994	
Portugal (accession)	11.IX.1985	22.XI.1994	

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>	<b>Effective date of denunciation</b>
<b>Russian Federation<sup>2</sup> (accession)</b>	30.I.1989	22.XI.1994	
<b>Spain (accession)</b>	5.IV.1982	22.XI.1994	
<b>Sweden (ratification)</b>	7.VII.1978	22.XI.1994	
<b>United Kingdom (ratification)</b>	31.I.1980	22.XI.1994	15.V.1998
<b>Vanuatu (accession)</b>	13.I.1989	22.XI.1994	
<b>Venezuela (accession)</b>	21.I.1992	22.XI.1994	

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<sup>1</sup> With a declaration or statement.

<sup>2</sup> As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

<sup>3</sup> Applies only to the Hong Kong Special Administrative Region.

### States which have denounced the Protocol

	<b>Date of receipt of denunciation</b>	<b>Effective date of denunciation</b>
<b>China (in respect of HKAR)</b>	22.VIII/2002	22.VIII.2003
<b>Colombia</b>	25.I.2005	25.I.2006
<b>Ireland</b>	15.V.1997	15.V.1998
<b>Malta</b>	6.I.2000	6.I.2001
<b>United Kingdom</b>	9.V.1997	15.V.1998

### Declarations, Reservations and Statements

#### Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany contains the following declaration in the English language:

“... with effect from the date on which the Protocol enters into force for the Federal Republic of Germany, it shall also apply to Berlin (West).”

#### Poland

(for text of the notification, see page 458)

*Fund Protocol 1992**Protocole Fonds 1992*

**Protocol of 1992 to amend  
the International  
Convention on the  
Establishment of an  
International  
Fund for compensation  
for oil pollution damage**

**(FUND PROT 1992)\***

Done at London,  
27 November 1992  
Entry into force: 30 May 1996

**Protocole de 1992 modifiant  
la Convention Internationale  
de 1971 portant  
Creation d'un Fonds  
International  
d'indemnisation pour les  
dommages dus à la pollution  
par les hydrocarbures**

**(FONDS PROT 1992)**

Signé a Londres,  
le 27 novembre 1992  
Entrée en vigueur: 30 may 1996

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Albania (accession)</b>	30.VI.2005	30.VI.2006
<b>Algeria (accession)</b>	11.VI.1998	11.VI.1999
<b>Angola (accession)</b>	4.X.2001	4.X.2002
<b>Antigua and Barbuda (accession)</b>	14.VI.2000	14.VI.2001
<b>Argentina (accession)<sup>1</sup></b>	13.X.2000	13.X.2001
<b>Australia (accession)</b>	9.X.1995	9.X.1996
<b>Bahamas (accession)</b>	1.IV.1997	1.IV.1998
<b>Bahrain (accession)</b>	3.V.1996	3.V.1997
<b>Barbados (accession)</b>	7.VII.1998	7.VII.1999
<b>Belgium (accession)</b>	6.X.1998	6.X.1999
<b>Belize (accession)</b>	27.XI.1998	27.XI.1999
<b>Benin (accession)</b>	5.II.2010	5.II.2011
<b>Brunei Darussalam (accession)</b>	31.I.2002	31.I.2003
<b>Bulgaria (accession)</b>	18.XI.2005	18.XI.2006
<b>Cambodia (accession)</b>	8.VI.2001	8.VI.2002
<b>Cameroon (accession)</b>	15.X.2001	15.X.2002
<b>Canada (accession)<sup>1</sup></b>	29.V.1998	29.V.1999
<b>Cape Verde (accession)</b>	4.VII.2003	4.VII.2004
<b>China (accession)<sup>2</sup></b>	5.I.1999	5.I.2000
<b>Colombia (accession)</b>	19.XI.2001	19.XI.2002
<b>Comoros (accession)</b>	5.I.2000	5.I.2001
<b>Congo (accession)</b>	7.VIII.2002	7.VIII.2003
<b>Cook Islands (accession)</b>	12.III.2007	12.III.2008
<b>Côte d'Ivoire (accession)</b>	8.VII.2013	8.VII.2014
<b>Croatia (accession)</b>	12.I.1998	12.I.1999
<b>Cyprus (accession)</b>	12.V.1997	12.V.1998
<b>Denmark (ratification)</b>	30.V.1995	30.V.1996
<b>Djibouti (accession)</b>	8.I.2001	8.I.2002

\* The 1971 Fund Convention ceased to be in force on 24 May 2002 and therefore the Convention does not apply to incidents occurring after that date.

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Dominica (accession)</b>	31.VIII.2001	31.VIII.2002
<b>Dominican Republic (accession)</b>	24.VI.1999	24.VI.2000
<b>Ecuador (accession)</b>	11.XII.2007	11.XII.2008
<b>Estonia (accession)</b>	6.VIII.2004	6.VIII.2005
<b>Fiji (accession)</b>	30.XI.1999	30.XI.2000
<b>Finland (acceptance)</b>	24.XI.1995	24.XI.1996
<b>France (approval)</b>	29.IX.1994	30.V.1996
<b>Gabon (accession)</b>	31.V.2002	31.V.2003
<b>Georgia (accession)</b>	18.IV.2000	18.IV.2001
<b>Germany (ratification)<sup>1</sup></b>	29.IX.1994	30.V.1996
<b>Ghana (accession)</b>	3.II.2003	3.II.2004
<b>Greece (ratification)</b>	9.X.1995	9.X.1996
<b>Grenada (accession)</b>	7.I.1998	7.I.1999
<b>Guinea (accession)</b>	2.X.2002	2.X.2003
<b>Hungary (accession)</b>	30.III.2007	30.III.2008
<b>Iceland (accession)</b>	13.XI.1998	13.XI.1999
<b>India (accession)</b>	21.VI.2000	21.VI.2001
<b>Iran (accession)</b>	5.XI.2008	5.XI.2009
<b>Ireland (accession)<sup>1</sup></b>	15.V.1997	16.V.1998
<b>Israel (accession)</b>	21.X.2004	21.X.2005
<b>Italy (accession)</b>	16.IX.1999	16.IX.2000
<b>Jamaica (accession)</b>	24.VI.1997	24.VI.1998
<b>Japan (accession)</b>	24.VIII.1994	30.V.1996
<b>Kenya (accession)</b>	2.II.2000	2.II.2001
<b>Kiribati (accession)</b>	5.II.2007	5.II.2008
<b>Latvia (accession)</b>	6.IV.1998	6.IV.1999
<b>Liberia (accession)</b>	5.X.1995	5.X.1996
<b>Lithuania (accession)</b>	27.VI.2000	27.VI.2001
<b>Luxembourg (accession)</b>	21.XI.2005	21.XI.2006
<b>Madagascar (accession)</b>	21.V.2002	21.V.2003
<b>Malaysia (accession)</b>	9.VI.2004	9.VI.2005
<b>Maldives (accession)</b>	20.V.2005	20.V.2006
<b>Malta (accession)</b>	6.I.2000	6.I.2001
<b>Marshall Islands (accession)</b>	16.X.1995	16.X.1996
<b>Mauritania (accession)</b>	4.V.2012	4.V.2013
<b>Mauritius (accession)</b>	6.XII.1999	6.XII.2000
<b>Mexico (accession)</b>	13.V.1994	30.V.1996
<b>Monaco (ratification)</b>	8.XI.1996	8.XI.1997
<b>Montenegro (accession)</b>	29.XI.2011	29.XI.2012
<b>Morocco (ratification)</b>	22.VIII.2000	22.VIII.2001
<b>Mozambique (accession)</b>	26.IV.2002	26.IV.2003
<b>Namibia (accession)</b>	18.XII.2002	18.XII.2003
<b>Netherlands (accession)<sup>4,5</sup></b>	15.XI.1996	15.XI.1997
<b>New Zealand (accession)<sup>1</sup></b>	25.VI.1998	25.VI.1999
<b>Nicaragua (accession)</b>	4.IV.2014	4.IV.2015
<b>Nigeria (accession)</b>	24.V.2002	24.V.2003
<b>Niue (accession)</b>	27.VI.2012	27.VI.2013
<b>Norway (ratification)</b>	3.IV.1995	30.V.1996
<b>Oman (accession)</b>	8.VII.1994	30.V.1996
<b>Palau (accession)</b>	29.IX.2011	29.IX.2012

*Fund Protocol 1992**Protocole Fonds 1992*

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Panama (accession)</b>	18.III.1999	18.III.2000
<b>Papua New Guinea (accession)</b>	23.I.2001	23.I.2002
<b>Philippines (accession)</b>	7.VII.1997	7.VII.1998
<b>Poland (accession)</b>	21.XII.1999	21.XII.2000
<b>Portugal (accession)</b>	13.XI.2001	13.XI.2002
<b>Qatar (accession)</b>	20.XI.2001	20.XI.2002
<b>Republic of Korea (accession)<sup>1</sup></b>	7.III.1997	16.V.1998
<b>Russian Federation (accession)</b>	20.III.2000	20.III.2001
<b>St. Kitts and Nevis (accession)</b>	2.III.2005	2.III.2006
<b>St. Lucia (accession)</b>	20.V.2004	20.V.2005
<b>Saint Vincent and the Grenadines (accession)</b>	1.II.2002	1.II.2003
<b>Samoa (accession)</b>	9.X.2001	9.X.2002
<b>Senegal (accession)</b>	2.VIII.2011	2.VIII.2012
<b>Serbia (accession)</b>	25.V.2011	25.V.2012
<b>Seychelles (accession)</b>	23.VII.1999	23.VII.2000
<b>Sierra Leone (accession)</b>	4.VI.2001	4.VI.2002
<b>Singapore (accession)</b>	31.XII.1997	31.XII.1998
<b>Slovakia (accession)</b>	8.VII.2013	8.VII.2014
<b>Slovenia (accession)</b>	19.VII.2000	19.VII.2001
<b>South Africa (accession)</b>	1.X.2004	1.X.2005
<b>Spain (accession)<sup>1</sup></b>	6.VII.1995	16.V.1998
<b>Sri Lanka (accession)</b>	22.I.1999	22.I.2000
<b>Sweden (ratification)</b>	25.V.1995	30.V.1996
<b>Switzerland (accession)</b>	10.X.2005	10.X.2006
<b>Syria (accession)</b>	24.IV.2009	24.IV.2010
<b>Tonga (accession)</b>	10.XII.1999	10.XII.2000
<b>Trinidad and Tobago (accession)</b>	6.III.2000	6.III.2001
<b>Tunisia (accession)</b>	29.I.1997	29.I.1998
<b>Turkey (accession)<sup>1</sup></b>	17.VIII.2001	17.VIII.2002
<b>Tuvalu (accession)</b>	30.VI.2004	30.VI.2005
<b>United Arab Emirates (accession)</b>	19.XI.1997	19.XI.1998
<b>United Kingdom (accession)<sup>3</sup></b>	29.IX.1994	30.V.1996
<b>United Republic of Tanzania (accession)</b>	19.XI.2002	19.XI.2003
<b>Uruguay (accession)</b>	9.VII.1997	9.VII.1998
<b>Vanuatu (accession)</b>	18.II.1999	18.II.2000
<b>Venezuela (accession)</b>	22.VII.1998	22.VII.1999

Number of Contracting States 114

<sup>1</sup> With a declaration.<sup>2</sup> China declared that the Protocol will be applicable only to the Hong Kong Special Administrative Region.<sup>3</sup> The United Kingdom declared its accession to be effective in respect of:

The Bailiwick of Jersey

The Isle of Man

Falkland Islands\*

Montserrat

South Georgia and the South Sandwich Islands

Anguilla

)

- |                                      |   |                          |
|--------------------------------------|---|--------------------------|
| Bailiwick of Guernsey                | ) |                          |
| Bermuda                              | ) |                          |
| British Antarctic Territory          | ) |                          |
| British Indian Ocean Territory       | ) | with effect from 20.2.98 |
| Pitcairn, Henderson,                 |   |                          |
| Ducie and Oeno Islands               | ) |                          |
| Sovereign Base Areas of Akrotiri and |   |                          |
| Dhekelia on Cyprus                   | ) |                          |
| Turks & Caicos Islands               | ) |                          |
| Virgin Islands                       | ) |                          |
| Cayman Islands                       | ) |                          |
| Gibraltar                            | ) | with effect from 15.5.98 |
| St Helena and its Dependencies       | ) |                          |
- <sup>4</sup> Applies to Netherlands Antilles with effect from 21 December 2005.
- <sup>5</sup> Applies to Aruba with effect from 12 April 2006.

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\* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

## Declarations, Reservations and Statements

### Canada

The instrument of accession of Canada was accompanied by the following declaration: "By virtue of Article 14 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, the Government of Canada assumes responsibility for the payment of the obligations contained in Article 10, paragraph 1."

### Federal Republic of Germany

The instrument of ratification by Germany was accompanied by the following declaration: "The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992."

### New Zealand

The instrument of accession of New Zealand contained the following declaration: "And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zealand with the Depositary".

### Spain

The instrument of accession by Spain contained the following declaration:

*[Translation]*

"In accordance with the provisions of article 30, paragraph 4 of the above mentioned Protocol, Spain declares that the deposit of its instrument of accession shall not take effect for the purpose of this article until the end of the six-month period stipulated in article 31 of the said Protocol".

*Fund Protocol 2003**Protocole Fonds 2003*

**Protocol of 2003 to the  
International Convention on  
the Establishment of an  
International Fund for  
compensation for oil  
pollution damage, 1992**

**(FUND PROT 2003)**

Done at London, 16 may 2003  
Entry into force: 3 March 2005

**Protocole de 2003 à la  
Convention internationale  
de 1992 portant création  
d'un fonds international  
d'indemnisation pour les  
dommages dus à la pollution  
par les hydrocarbures**

**(FONDS PROT 2003)**

Signée à Londres le 16 mai 2003  
Entrée en vigueur: 3 Mars 2005

	Date of signature or deposit of of instrument	Date of entry into force
Australia (accession)	13.VII.2009	30.X.2009
Barbados (accession)	6.XII.2005	6.III.2006
Belgium (accession)	4.XI.2005	4.II..2006
Canada (accession)	2.X.2009	2.I.2010
Congo (accession)	19.V.2014	19.VIII.2014
Croatia (accession)	17.II.2006	17.V.2006
Denmark (signature) <sup>1</sup>	24.II.2004	3.III.2005
Estonia (accession)	14.X.2008	14.I.2009
Finland (accession) <sup>2</sup>	27.V.2004	3.III.2005
France (acceptance)	29.VI.2004	3.III.2005
Germany (accession) <sup>2</sup>	24.XI.2004	3.III.2005
Greece (accession)	23.X.2006	23.I.2007
Hungary (accession)	30.III.2007	30.VI.2007
Ireland (signature)	5.VII.2004	3.III.2005
Italy (accession)	20.X.2005	20.I.2006
Japan (accession)	13.VII.2004	3.III.2005
Korea (Republic of) (accession)	6.V.2010	6.VIII.2010
Latvia (accession)	18.IV.2006	18.VII.2006
Lithuania (accession)	22.XI.2005	22.II.2006
Montenegro (accession)	29.XI.2011	29.XI.2012
Morocco (accession)	4.XI.2009	4.II.2010
Netherlands (accession)	16.VI.2005	16.IX.2005
Norway (accession)	31.III.2004	3.III.2005
Poland (accession)	9.XII.2008	9.III.2009
Portugal (accession)	15.II.2005	5.V.2005
Slovakia (accession)	8.VII.2013	8.X.2013
Slovenia (accession)	3.III.2006	3.VI.2006
Spain (ratification)	3.XII.2004	3.III.2005
Sweden (accession)	5.V.2005	5.VIII.2005
Turkey (accession)	5.III.2013	5.VI.2013
United Kingdom (accession) <sup>3</sup>	8.VI.2006	8.IX.2006

Number of Contracting States: 31

<sup>1</sup> Extended to Greenland (3 March 2005) and Faroe Islands (19 June 2006).

<sup>2</sup> With a declaration, reservation or statement.

<sup>3</sup> Extended to the Isle of Man with effect from 15 September 2008, and to Jersey with effect from 22 April 2016

*NUCLEAR 1971***Convention relating to Civil Liability in the Field of****Maritime Carriage of nuclear material (NUCLEAR 1971)**

Done at Brussels,  
17 December 1971  
Entered into force: 15 July 1975

**Convention relative 9 la Responsabilité Civile dans le Domaine du Transport Maritime de matières nucléaires (NUCLEAR 1971)**

Signée a Bruxelles,  
le 17 décembre 1971  
Entrée en vigueur: 15 juillet 1975

	Date of deposit of instrument	Date of entry into force
<b>Argentina (accession)</b>	18.V.1981	16.VIII.1981
<b>Belgium (ratification)</b>	15.VI.1989	13.IX.1989
<b>Bulgaria (accession)</b>	3.XII.2004	3.III.2005
<b>Denmark (ratification)<sup>1</sup></b>	14.IX.1974	15.VII.1975
<b>Dominica (accession)</b>	31.VIII.2001	29.XI.2001
<b>Finland (acceptance)</b>	6.VI.1991	4.IX.1991
<b>France (ratification)</b>	2.II.1973	15.VII.1975
<b>Gabon (accession)</b>	21.I.1982	21.IV.1982
<b>Germany* (ratification)</b>	1.X.1975	30.XII.1975
<b>Italy* (ratification)</b>	21.VII.1980	19.X.1980
<b>Latvia (accession)</b>	25.I.2002	25.IV.2002
<b>Liberia (accession)</b>	17.II.1981	18.V.1981
<b>Netherlands (accession)</b>	1.VIII.1991	30.X.1991
<b>Norway (ratification)</b>	16.IV.1975	15.VII.1975
<b>Spain (accession)</b>	21.V.1974	15.VII.1975
<b>Sweden (ratification)</b>	22.XI.1974	15.VII.1975
<b>Yemen (accession)</b>	6.III.1979	4.VI.1979

Number of Contracting States: 17

**Declarations, Reservations and Statements****Federal Republic of Germany**

The following reservation accompanies the signature of the Convention by the Representative of the Federal Republic of Germany (in the English language):  
“Pursuant to article 10 of the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, the Federal Republic of Germany reserves the right to provide by national law, that the persons liable under an international convention or national law applicable in the field of maritime transport may continue to be liable in addition to the operator of a nuclear installation on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator.”  
This reservation was withdrawn at the time of deposit of the instrument of ratification of the Convention.

(1) Shall not apply to the Faroe Islands.



NUCLEAR 1971

PAL 1974

The instrument of ratification of the Government of the Federal Republic of Germany was accompanied by the following declaration (in the German language):

[Translation]

“That the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.

### Italy

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the English language):

“It is understood that the ratification of the said Convention will not be interpreted in such a way as to deprive the Italian State of any right of recourse made according to the international law for the damages caused to the State itself or its citizens by a nuclear accident”.

### Athens Convention relating to the Carriage of passengers and their luggage by sea (PAL 1974)

Done at Athens:  
13 December 1974  
Entered into force:  
28 April 1987

### Convention d'Athènes relative au Transport par mer de passagers et de leurs bagages (PAL 1974)

Signée à Athènes,  
le 13 décembre 1974  
Entrée en vigueur:  
28 avril 1987

	Date of deposit of instrument	Date of entry into force
<b>Albania (accession)</b> (denunciation – 16.III.2005)	16.III.2005	14.VI.2005
<b>Argentina (accession)<sup>1</sup></b>	26.V.1983	28.IV.1987
<b>Bahamas (accession)</b>	7.VI.1983	28.IV.1987
<b>Barbados (accession)</b>	6.V.1994	4.VIII.1994
<b>Belgium (accession)</b> (denunciation – 23.IV.2013)	15.VI.1989	13.IX.1989
<b>Belize (accession)</b> (denunciation – 27.III.2014)	22.VIII.2011	20.XI.2011
<b>China (accession)<sup>2, 3</sup></b>	1.VI.1994	30.VIII.1994
<b>Congo (accession)</b>	19.V.2014	17.VIII.2014
<b>Croatia (accession)</b> (denunciation – 25.IX.2013)	12.I.1998	12.IV.1998
<b>Dominica (accession)</b>	31.VIII.2001	29.XI.2001
<b>Egypt (accession)</b>	18.X.1991	16.I.1992
<b>Equatorial Guinea (accession)</b>	24.IV.1996	23.VII.1996
<b>Estonia (accession)</b>	8.X.2002	6.I.2003
<b>Georgia (accession)</b>	25.VIII.1995	23.XI.1995
<b>Greece (acceptance)</b> (denunciation – 6.XII.2013)	3.VII.1991	1.X.1991
<b>Guyana (accession)</b>	10.XII.1997	10.III.1998

## PAL 1974

	Date of deposit of instrument	Date of entry into force
<b>Ireland (accession)</b> <i>(denunciation – 7.VIII.2014)</i>	24.II.1998	25.V.1998
<b>Jordan (accession)</b>	3.X.1995	1.I.1996
<b>Latvia (accession)</b> <i>(denunciation – 15.II.2005)</i>	6.XII.2001	6.III.2002
<b>Liberia (accession)</b>	17.II.1981	28.IV.1987
<b>Libya (accession)</b>	8.XII.2012	6.II.2012
<b>Luxembourg (accession)</b>	14.II.1991	15.V.1991
<b>Malawi (accession)</b>	9.III.1993	7.VI.1993
<b>Marshall Islands (accession)</b> <i>(denunciation – 27.X. 2014)</i>	29.XI.1994	27.II.1995
<b>Nigeria (accession)</b>	24.II.2004	24.V.2004
<b>Poland (ratification)</b>	28.I.1987	28.IV.1987
<b>Russian Federation (accession)<sup>1, 4</sup></b>	27.IV.1983	28.IV.1987
<b>Serbia (accession)</b> <i>(denunciation – 25.V.2011)</i>	25.V.2011	23.VIII.2011
<b>Spain (accession)</b> <i>(denunciation – 11.VI.2015)</i>	8.X.1981	28.IV.1987
<b>St. Kitts and Nevis (accession)</b>	30.VIII.2005	28.XI.2005
<b>Switzerland (ratification)</b>	15.XII.1987	14.III.1988
<b>Tonga (accession)</b>	15.II.1977	28.IV.1987
<b>Ukraine (accession)</b>	11.XI.1994	9.II.1995
<b>United Kingdom (ratification)</b> <i>(denunciation – 21.I.2014)</i>	31.I.1980	28.IV.1987
<b>Vanuatu (accession)</b>	13.I.1989	13.IV.1989
<b>Yemen (accession)</b>	6.III.1979	28.IV.1987

Number of Contracting States: 25

<sup>1</sup> With a declaration or reservation.

<sup>2</sup> Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

<sup>3</sup> Applies to Macau Special Administrative Region with effect from 24 June 2005.

<sup>4</sup> As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

### Declarations, Reservations and Statements

#### Argentina<sup>(1)</sup>

The instrument of accession of the Argentine Republic contained a declaration of non-application of the Convention under article 22, paragraph 1, as follows (in the Spanish language):

*[Translation]*

“The Argentine Republic will not apply the Convention when both the passengers and the carrier are Argentine nationals”.

The instrument also contained the following reservations:

*[Translation]*

“The Argentine Republic rejects the extension of the application of the Athens

PAL 1974

PAL Protocol 1976

Convention relating to Carriage of Passengers and Their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of “Falkland Islands”, and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory”.

### USSR

The instrument of accession of the Union of Soviet Socialist Republic contained a declaration of non-application of the Convention under article 22, paragraph 1.

(1) A communication dated 19 October 1983 from the Government of the United Kingdom, the full text of which was circulated by the depositary, includes the following:

“The Government of the United Kingdom of Great Britain and Northern Ireland reject each and every of these statements and assertions. The United Kingdom has no doubt as to its sovereignty over the Falkland Islands and thus its right to include them within the scope of application of international agreements of which it is a party. The United Kingdom cannot accept that the Government of the Argentine Republic has any rights in this regard. Nor can the United Kingdom accept that the Falkland Islands are incorrectly designated”.

### Protocol to the Athens Convention relating to the Carriage of passengers and their luggage by sea (PAL PROT 1976)

Done at London,  
19 November 1976

Entered into force: 30 April 1989

### Protocole à la Convention d'Athènes relative au Transport par mer de passagers et de leurs bagages (PAL PROT 1976)

Signé à Londres,  
le 19 novembre 1976

Entré en vigueur: 30 avril 1989

	Date of deposit of instrument	Date of entry into force
<b>Albania (accession)</b>	16.III.2005	14.VI.2005
<i>(denunciation – 16.III.2005)</i>		
<b>Argentina (accession)<sup>1</sup></b>	28.IV.1987	30.IV.1989
<b>Bahamas (accession)</b>	28.IV.1987	30.IV.1989
<b>Barbados (accession)</b>	6.V.1994	4.VIII.1994
<b>Belgium (accession)</b>	15.VI.1989	13.IX.1989
<i>(denunciation – 23.IV.2013)</i>		
<b>China<sup>5,6</sup> (accession)</b>	1.VI.1994	30.VIII.1994
<b>Croatia (accession)</b>	12.I.1998	12.IV.1998
<i>(denunciation – 25.IX.2013)</i>		
<b>Dominica (accession)</b>	31.VIII.2001	29.XI.2001
<b>Estonia (accession)</b>	8.X.2002	6.I.2003
<b>Georgia (accession)</b>	25.VIII.1995	23.XI.1995

*PAL Protocol 1976*

	Date of deposit of instrument	Date of entry into force
<b>Greece (accession)</b> <i>(denunciation – 6.XII.2013)</i>	3.VII.1991	1.X.1991
<b>Ireland (accession)</b> <i>(denunciation – 7.XI.2014)</i>	24.II.1998	25.V.1998
<b>Latvia (accession)</b> <i>(denunciation – 15.II.2005)</i>	6.XII.2001	6.III.2002
<b>Liberia (accession)</b>	28.IV.1987	30.IV.1989
<b>Libya (accession)</b>	8.XI.2012	6.XI.2013
<b>Luxembourg (accession)</b>	14.II.1991	15.V.1991
<b>Marshall Islands (accession)</b> <i>(denunciation – 27.X.2014)</i>	29.XI.1994	27.II.1995
<b>Poland (accession)</b>	28.IV.1987	30.IV.1989
<b>Russian Federation <sup>2</sup> (accession) <sup>3</sup></b>	30.I.1989	30.IV.1989
<b>Spain (accession)</b> <i>(denunciation – 11.VI.2015)</i>	28.IV.1987	30.IV.1989
<b>Switzerland (accession) <sup>3</sup></b>	15.XII.1987	30.IV.1989
<b>Tonga (accession)</b>	18.IX.2003	17.XII.2003
<b>Ukraine (accession)</b>	11.XI.1994	9.II.1995
<b>United Kingdom (ratification) <sup>3, 4</sup></b> <i>(denunciation – 21.I.2014)</i>	28.IV.1987	30.IV.1989
<b>Vanuatu (accession)</b>	13.I.1989	30.IV.1989
<b>Yemen (accession)</b>	28.IV.1987	30.IV.1989

Number of Contracting States: 17

<sup>1</sup> With a reservation.

<sup>2</sup> As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

<sup>3</sup> With a notification under article II(3).

<sup>4</sup> The United Kingdom declared ratification to be effective also in respect of:

Bailiwick of Jersey  
Bailiwick of Guernsey  
Isle of Man  
Bermuda  
British Virgin Islands  
Cayman Islands  
Falkland Islands\*  
Gibraltar  
Hong Kong\*\*  
Montserrat  
Pitcairn  
Saint Helena and Dependencies

<sup>5</sup> Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

<sup>6</sup> Applies to Macau Special Administrative Region with effect from 24 June 2005.

\* With a reservation made by the Argentine Republic and a communication received from the United Kingdom.

\*\* Ceased to apply to Hong Kong with effect from 1.VII.1997.

### Declarations, Reservations and Statements

#### Argentina <sup>(1)</sup>

The instrument of accession of the Argentine Republic contained the following reservation (in the Spanish language):

*[Translation]*

“The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of “Falkland Islands”, and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory”.

<sup>(1)</sup> The depositary received the following communication dated 4 August 1987 from the United Kingdom Foreign and Commonwealth Office:

“The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the reservation made by the Argentine Republic as regards the Falkland Islands.

The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and, accordingly, their right to extend the application of the Convention to the Falkland Islands”.

**Protocol of 1990 to amend the  
1974 Athens Convention  
relating to the Carriage  
of passengers  
and their luggage by sea  
(PAL PROT 1990)**

Done at London, 29 March 1990  
Not yet in force

**Protocole de 1990 modifiant  
La Convention d'Athènes  
de 1974 relative au  
Transport par mer de  
passagers et de leurs bagages  
(PAL PROT 1990)**

Fait à Londres, le 29 mars 1990  
Pas encore en vigueur

	Date of deposit of instrument
<b>Albania (accession)</b>	16.III.2005
<i>(denunciation – 16.III.2005)</i>	
<b>Croatia (accession)</b>	12.I.1998
<i>(denunciation – 25.IX.2013)</i>	
<b>Egypt (accession)</b>	18.X.1991
<b>Luxembourg (accession)</b>	21.XI.2005
<b>Spain (accession)</b>	24.II.1993
<i>(denunciation 11.VI.2015)</i>	
<b>Tonga (accession)</b>	18.IX.2003

Number of Contracting States: 3

*Convention d'Athènes, 1974*

**Protocol of 2002  
to the Athens Convention  
relating to the carriage  
of passengers  
and their luggage by sea, 1974  
(PAL PROT 2002)**

Done at London, 1 November 2002  
Entered into force: 23 April 2014

**Protocole de 2002  
à la Convention d'Athènes  
relative au Transport  
par mer de passagers  
et de leurs bagages, 1974  
(PAL PROT 2002)**

Fait à Londres, le 1 Novembre 2002  
Entrée en vigueur: 23 Avril 2014

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Albania (accession)</b>	16.III.2005	23.IV.2014
<b>Belgium (accession)<sup>1</sup></b>	23.IV.2013	23.IV.2014
<b>Belize (accession)</b>	22.VIII.2011	23.IV.2014
<b>Bulgaria (accession)<sup>1</sup></b>	10.XII.2013	23.IV.2014
<b>Croatia (accession)<sup>1</sup></b>	25.IX.2013	23.IV.2014
<b>Denmark (accession)<sup>1</sup></b>	23.V.2012	23.IV.2014
<b>European Union (accession)<sup>1,2</sup></b>	15.XII.2011	23.IV.2014
<b>France (accession)</b>	19.IX.2016	19.XII.2016
<b>Greece (accession)<sup>1</sup></b>	6.XII.2013	23.IV.2014
<b>Ireland (accession)</b>	8.VIII.2014	8.XI.2014
<b>Latvia (accession)<sup>1</sup></b>	17.II.2005	23.IV.2014
<b>Lithuania (accession)</b>	10.III.2015	10.VI.2015
<b>Malta (accession)<sup>1</sup></b>	7.VIII.2013	23.IV.2014
<b>Montenegro (accession)</b>	9.IX.2015	9.XII.2015
<b>Netherlands (accession)<sup>1</sup></b>	26.IX.2012	23.IV.2014
<b>Norway (ratification)<sup>1</sup></b>	26.XI.2013	23.IV.2014
<b>Palau (accession)</b>	29.IX.2011	23.IV.2014
<b>Panama (accession)<sup>1</sup></b>	23.I.2014	23.IV.2014
<b>Portugal (accession)</b>	1.IX.2015	1.XII.2015
<b>Saint Kitts and Nevis (accession)</b>	30.VIII.2005	23.IV.2014
<b>Serbia (accession)<sup>1</sup></b>	25.V.2011	23.IV.2014
<b>Slovak Republic (accession)</b>	13.IV.2015	13.VII.2015
<b>Spain (ratification)</b>	11.VI.2015	11.IX.2015
<b>Sweden (ratification)</b>	2.VI.2015	2.IX.2015
<b>Syrian Arab Republic (accession)<sup>1</sup></b>	10.III.2005	23.IV.2014
<b>United Kingdom (ratification)<sup>1,3</sup></b>	21.I.2014	23.IV.2014

Number of Contracting States: 26

<sup>1</sup> With a declaration

<sup>2</sup> Article 19(3) of the Protocol provides that: "Where the number of States Parties is relevant in this Protocol, including but not limited to Articles 20 and 23 of this Protocol, the Regional Economic Integration Organization shall not count as a State Party in addition to its Member States which are States Parties." Accordingly, the number of Contracting States remains unaltered with this accession.

<sup>3</sup> The depositary received a communication, dated 8 May 2014, from the Foreign and Commonwealth Office in London, informing that the protocol was extended to Gibraltar on 8 May 2014.

*LLMC 1976***Convention on  
Limitation of Liability  
for maritime claims****(LLMC 1976)**Done at London, 19 November 1976  
Entered into force: 1 December 1986**Convention sur la  
Limitation de la  
Responsabilité en matière  
de créances maritimes  
(LLMC 1976)**Signée à Londres, le 19 novembre 1976  
Entrée en vigueur: 1 décembre 1986

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Albania (accession)</b>	7.VI.2004	1.X.2004
<b>Algeria (accession)</b>	4.VIII.2004	1.XII.2004
<b>Australia (accession)</b> <i>(denunciation – 21.V.2013)</i>	20.II.1991	1.VI.1991
<b>Azerbaijan (accession)</b>	16.VII.2004	1.XI.2004
<b>Bahamas (accession)</b>	7.VI.1983	1.XII.1986
<b>Barbados (accession)</b>	6.V.1994	1.IX.1994
<b>Belgium (accession)<sup>1,2</sup></b> <i>(denunciation – 9.X.2009)</i>	15.VI.1989	1.X.1989
<b>Benin (accession)</b>	1.XI.1985	1.XII.1986
<b>Bulgaria (accession)</b>	4.VII.2005	1.XI.2005
<b>China<sup>9</sup></b>	–	1.VII.1997
<b>Congo (accession)</b>	7.IX.2004	3.II.2004
<b>Cook Islands (accession)</b>	12.III.2007	1.VII.2007
<b>Croatia (accession)</b>	2.III.1993	1.VI.1993
<b>Cyprus (accession)</b>	23.XII.2005	1.IV.2006
<b>Denmark (ratification)</b> <i>(denunciation – 25.III.2004)</i>	30.V.1984	1.XII.1986
<b>Dominica (accession)</b>	31.VIII.2001	1.XII.2001
<b>Egypt (accession)</b>	30.III.1988	1.VII.1988
<b>Equatorial Guinea (accession)</b>	24.IV.1996	1.VIII.1996
<b>Estonia (accession)</b>	23.X.2002	1.II.2003
<b>Finland (ratification)</b> <i>(denunciation – 15.IX.2000)</i>	8.V.1984	1.XII.1986
<b>France (approval)<sup>1,2</sup></b>	1.VII.1981	1.XII.1986
<b>Georgia (accession)</b>	20.II.1996	1.VI.1996
<b>Germany<sup>3</sup> (ratification)<sup>1,2</sup></b> <i>(denunciation – 18.X.2000)</i>	12.V.1987	1.IX.1987
<b>Greece (accession)</b>	3.VII.1991	1.XI.1991
<b>Guyana (accession)</b>	10.XII.1997	1.IV.1998
<b>Hungary (accession)</b>	4.VII.2008	1.XI.2008
<b>India (accession)</b>	20.VIII.2002	1.XII.2002
<b>Iran (accession)</b>	1.IX.2015	1.XII.2015
<b>Ireland (accession)<sup>1</sup></b>	24.II.1998	1.VI.1998
<b>Jamaica (accession)</b>	17.VIII.2005	1.XII.2006
<b>Japan (accession)<sup>1</sup></b> <i>(denunciation – 29.VII.2005)</i>	4.VI.1982	1.XII.1986
<b>Kiribati (accession)</b>	5.II.2007	1.VI.2007
<b>Latvia (accession)</b>	13.VII.1999	1.XI.1999

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	Date of deposit of instrument	Date of entry into force
<b>Liberia (accession)</b>	17.II.1981	1.XII.1986
<b>Lithuania (accession)</b>	3.III.2004	1.VII.2004
<b>Luxembourg (accession)</b>	21.XI.2005	1.III.2006
<b>Marshall Islands (accession)</b>	29.XI.1994	1.III.1995
<b>Mauritius (accession)</b>	17.XII.2002	1.VI.2003
<b>Mexico (accession)</b>	13.V.1994	1.IX.1994
<b>Mongolia (accession)</b>	28.IX.2011	1.I.2012
<b>Netherlands (accession)</b> <sup>1, 2</sup> <i>(denunciation – 23.XII.2010)</i>	15.V.1990	1.IX.1990
<b>New Zealand (accession)</b> <sup>5</sup> <i>(denunciation – 12-IX-2016)</i>	14.II.1994	1.VI.1994
<b>Nigeria (accession)</b>	24.II.2004	1.VI.2004
<b>Niue (accession)</b>	27.VI.2012	1.X.2012
<b>Norway (ratification)</b> <sup>4</sup> <i>(denunciation – 31.X.2005)</i>	30.III.1984	1.XII.1986
<b>Poland (accession)</b> <sup>6</sup>	28.IV.1986	1.XII.1986
<b>Romania (accession)</b>	12.III.2007	1.VII.2007
<b>Samoa (accession)</b>	18.V.2004	1.IX.2004
<b>Sierra Leone (accession)</b>	26.VII.2001	1.XI.2001
<b>Singapore (accession)</b>	24.I.2005	1.V.2005
<b>Spain (ratification)</b> <i>(denunciation – 24.X.2006)</i>	13.XI.1981	1.XII.1986
<b>St. Lucia (accession)</b>	20.V.2004	1.IX.2004
<b>Syrian Arab Republic (accession)</b>	21.IX.2005	1.I.2006
<b>Sweden (ratification)</b> <sup>4</sup> <i>(denunciation – 22.VII.2004)</i>	30.III.1984	1.XII.1986
<b>Switzerland (accession)</b> <sup>2, 6</sup>	15.XII.1987	1.IV.1988
<b>Tonga (accession)</b>	18.IX.2003	1.I.2004
<b>Trinidad and Tobago (accession)</b>	6.III.2000	1.VII.2000
<b>Turkey (accession)</b>	6.III.1998	1.VII.1998
<b>Tuvalu (accession)</b>	12.I.2009	1.IV.2009
<b>United Arab Emirates (accession)</b>	19.XI.1997	1.III.1998
<b>United Kingdom (ratification)</b> <sup>1, 7, 8</sup> <i>(denunciation – 17.VII.1998)</i>	31.I.1980	1.XII.1986
<b>Vanuatu (accession)</b>	14.IX.1992	1.I.1993
<b>Yemen (accession)</b>	6.III.1979	1.XII.1986

Number of Contracting States: 524

The Convention applies provisionally in respect of: Belize

<sup>1</sup> With a declaration, reservation or statement.

<sup>2</sup> With a notification under article 15(2).

<sup>3</sup> On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded 1, 6 to the Convention on 17.II.1989.

<sup>4</sup> With a notification under article 15(4).

<sup>5</sup> The instrument of accession contained the following statement:

“AND WHEREAS it is not intended that the accession by the Government of New Zealand to the Convention should extend to Tokelau;”.



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- <sup>6</sup> With a notification under article 8(4).  
<sup>7</sup> The United Kingdom declared its ratification to be effective also in respect of:  
 Bailiwick of Jersey  
 Bailiwick of Guernsey  
 Isle of Man  
 Belize\*  
 Bermuda  
 British Virgin Islands  
 Cayman Islands  
 Falkland Islands\*\*  
 Gibraltar  
 Hong Kong\*\*\*  
 Montserrat  
 Pitcairn  
 Saint Helena and Dependencies  
 Turks and Caicos Islands  
 United Kingdom Sovereign Base Areas of  
 Akrotiri and Dhekelia in the Island of Cyprus  
 Anguilla  
 British Antarctic Territory  
 British Indian Ocean Territory  
 South Georgia and the South Sandwich Islands  
 ) notification received  
 ) 4.II.1999  
<sup>8</sup> With notifications under articles 8(4) and 15(2).  
<sup>9</sup> Applies only to the Hong Kong Special Administrative Region.

- \* Has since become the independent State of Belize to which the Convention applies provisionally.  
 \*\* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).  
 \*\*\* Ceased to apply to Hong Kong with effect from 1.VII.1997.

**Declarations, Reservations and Statements****Belgium**

The instrument of accession of the Kingdom of Belgium was accompanied by the following reservation (in the French language):

*[Translation]*

“In accordance with the provisions of article 18, paragraph 1, Belgium expresses a reservation on article 2, paragraph 1(d) and (e)”.

**China**

By notification dated 5 June 1997 from the People's Republic of China:

*[Translation]*

“1. with respect to the Hong Kong Special Administrative Region, it reserves the right in accordance with Article 18 (1), to exclude the application of the Article 2 (1)(d)”.

**France**

The instrument of approval of the French Republic contained the following reservation (in the French language):

*[Translation]*

“In accordance with article 18, paragraph 1, the Government of the French Republic reserves the right to exclude the application of article 2, paragraphs 1(d) and (e)”.

**German Democratic Republic**

The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):

*[Translation]*

*Article 2, paragraph 1(d) and (e)*

“The German Democratic Republic notes that for the purpose of this Convention there is no limitation of liability within its territorial sea and internal waters in respect of the removal of a wrecked ship, the raising, removal or destruction of a ship which is sunk,

stranded or abandoned (including anything that is or has been on board such ship). Claims, including liability, derive from the laws and regulations of the German Democratic Republic.”

*Article 8, paragraph 1*

“The German Democratic Republic accepts the use of the Special Drawing Rights merely as a technical unit of account. This does not imply any change in its position toward the International Monetary Fund”.

**Federal Republic of Germany**

The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the German language):

*[Translation]*

“...that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany”.

“In accordance with art. 18, par. 1 of the Convention, the Federal Republic of Germany reserves the right to exclude the application of art. 2, par. 1(d) and (e) of the Convention”

**Japan**

The instrument of accession of Japan was accompanied by the following statement (in the English language):

“...the Government of Japan, in accordance with the provision of paragraph 1 of article 18 of the Convention, reserves the right to exclude the application of paragraph 1(d) and (e) of article 2 of the Convention”.

**Netherlands**

The instrument of accession of the Kingdom of the Netherlands contained the following reservation:

“In accordance with article 18, paragraph 1 of the Convention on limitation of liability for maritime claims, 1976, done at London on 19 November 1976, the Kingdom of the Netherlands reserves the right to exclude the application of article 2, paragraph 1(d) and (e) of the Convention”.

**United Kingdom**

The instrument of accession of the United Kingdom of Great Britain and Northern Ireland contained reservation which states that the United Kingdom was “Reserving the right, in accordance with article 18, paragraph 1, of the Convention, on its own behalf and on behalf of the above mentioned territories, to exclude the application of article 2, paragraph 1(d); and to exclude the application of article 2, paragraph 1(e) with regard to Gibraltar only”.

## NOTIFICATIONS

**Article 8(4)**

**German Democratic Republic**

*[Translation]*

“The amounts expressed in Special Drawing Rights will be converted into marks of the German Democratic Republic at the exchange rate fixed by the Staatsbank of the German Democratic Republic on the basis of the current rate of the US dollar or of any other freely convertible currency”.

**China**

*[Translation]*

“The manner of calculation employed with respect to article 8(1) of the Convention concerning the unit of account shall be the method of valuation applied by the International Monetary Fund;”

**Poland**

“Poland will now calculate financial liabilities mentioned in the Convention in the terms of the Special Drawing Right, according to the following method.

The Polish National Bank will fix a rate of exchange of the SDR to the United States dollar according to the current rates of exchange quoted by Reuter. Next, the US dollar will be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies”.

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*LLMC 1976*

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**Switzerland**

"The Federal Council declares, with reference to article 8, paragraphs 1 and 4 of the Convention that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:

The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its *Monthly Gazette*".

**United Kingdom**

"...The manner of calculation employed by the United Kingdom pursuant to article 8(1) of the Convention shall be the method of valuation applied by the International Monetary Fund".

**Article 15(2)****Belgium***[Translation]*

"In accordance with the provisions of article 15, paragraph 2, Belgium will apply the provisions of the Convention to inland navigation".

**France***[Translation]*

"...- that no limit of liability is provided for vessels navigating on French internal waterways;

- that, as far as ships with a tonnage of less than 300 tons are concerned, the general limits of liability are equal to half those established in article 6 of the Convention...for ships with a tonnage not exceeding 500 tons".

**Federal Republic of Germany***[Translation]*

"In accordance with art. 15, par. 2, first sentence, sub-par. (a) of the Convention, the system of limitation of liability to be applied to vessels which are, according to the law of the Federal Republic of Germany, ships intended for navigation on inland waterways, is regulated by the provisions relating to the private law aspects of inland navigation.

In accordance with art. 15, par. 2, first sentence, sub-par. (b) of the Convention, the system of limitation of liability to be applied to ships up to a tonnage of 250 tons is regulated by specific provisions of the law of the Federal Republic of Germany to the effect that, with respect to such a ship, the limit of liability to be calculated in accordance with art. 6, par. 1 (b) of the Convention is half of the limitation amount to be applied with respect to a ship with a tonnage of 500 tons".

**Netherlands***Paragraph 2(a)*

"The Act of June 14th 1989 (Staatsblad 239) relating to the limitation of liability of owners of inland navigation vessels provides that the limits of liability shall be calculated in accordance with an Order in Council.

The Order in Council of February 19th 1990 (Staatsblad 96) adopts the following limits of liability in respect of ships intended for navigation on inland waterways.

I. Limits of liability for claims in respect of loss of life or personal injury other than those in respect of passengers of a ship, arising on any distinct occasion:

1. for a ship non intended for the carriage of cargo, in particular a passenger ship, 200 Units of Account per cubic metre of displacement at maximum permitted draught, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;

2. for a ship intended for the carriage of cargo, 200 Units of Account per ton of the ship's maximum deadweight, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;

*LLMC 1976*

3. for a tug or a pusher, 700 Units of Account for each kW of the motorpower of the means of propulsion;
  4. for a pusher which at the time the damage was caused was coupled to barges in a pushed convoy, the amount calculated in accordance with 3 shall be increased by 100 Units of Account per ton of the maximum deadweight of the pushed barges; such increase shall not apply if it is proved that the pusher has rendered salvage services to one or more of such barges;
  5. for a ship equipped with mechanical means of propulsion which at the time the damage was caused was moving other ships coupled to this ship, the amount calculated in accordance with 1, 2 or 3 shall be increased by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other ships; such increase shall not apply if it is proved that this ship has rendered salvage services to one or more of the coupled ships;
  6. for hydrofoils, dredgers, floating cranes, elevators and all other floating appliances, pontoons or plant of a similar nature, treated as inland navigation ships in accordance with Article 951a, paragraph 4 of the Commercial Code, their value at the time of the incident;
  7. where in cases mentioned under 4 and 5 the limitation fund of the pusher or the mechanically propelled ships is increased by 100 Units of Account per ton of maximum deadweight of the pushed barges or per cubic metre of displacement of the other coupled ships, the limitation fund of each barge or of each of the other coupled ships shall be reduced by 100 Units of Account per ton of the maximum deadweight of the barge or by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other vessel with respect to claims arising out of the same incident; however, in no case shall the limitation amount be less than 200,000 Units of Account.
- II. The limits of liability for claims in respect of any damage caused by water pollution, other than claims for loss of life or personal injury, are equal to the limits mentioned under I.
- III. The limits of liability for all other claims are equal to half the amount of the limits mentioned under I.
- IV. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of an inland navigation ship, the limit of liability of the owner thereof shall be an amount equal to 60,000 Units of Account multiplied by the number of passengers the ship is authorized to carry according to its legally established capacity or, in the event that the maximum number of passengers the ship is authorized to carry has not been established by law, an amount equal to 60,000 Units of Account multiplied by the number of passengers actually carried on board at the time of the incident. However, the limitation of liability shall in no case be less than 720,000 Units of Account and shall not exceed the following amounts:
- (i) 3 million Units of Account for a vessel with an authorized maximum capacity of 100 passengers;
  - (ii) 6 million Units of Account for a vessel with an authorized maximum capacity of 180 passengers;
  - (iii) 12 million Units of Account for a vessel with an authorized maximum capacity of more than 180 passengers;

Claims for loss of life or personal injury to passengers have been defined in the same way as in Article 7, paragraph 2 of the Convention on Limitation of Liability for Maritime Claims, 1976.

The Unit of Account mentioned under I-IV is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976."

*Paragraph 2(b)*

The Act of June 14th 1989 (Staatsblad 241) relating to the limitation of liability for maritime claims provides that with respect to ships which are according to their construction intended exclusively or mainly for the carriage of persons and have a tonnage of less than 300, the limit of liability for claims other than for loss of life or personal injury may be established by Order in Council at a lower level than under the Convention.

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*LLMC 1976*

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The Order in Council of February 19th 1990 (Staatsblad 97) provides that the limit shall be 100,000 Units of Account.

The Unit of Account is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976.”

**Switzerland***[Translation]*

“In accordance with article 15, paragraph 2, of the Convention on Limitation of Liability for Maritime Claims, 1976, we have the honour to inform you that Switzerland has availed itself of the option provided in paragraph 2(a) of the above mentioned article.

Since the entry into force of article 44a of the Maritime Navigation Order of 20 November 1956, the limitation of the liability of the owner of an inland waterways ship has been determined in Switzerland in accordance with the provisions of that article, a copy of which is [reproduced below]:

**II. Limitation of liability of the owner of an inland waterways vessel****Article 44a**

1. In compliance with article 5, subparagraph 3c, of the law on maritime navigation, the liability of the owner of an inland waterways vessel, provided in article 126, subparagraph 2c, of the law, shall be limited as follows:

- a. in respect of claims for loss of life or personal injury, to an amount of 200 units of account per deadweight tonne of a vessel used for the carriage of goods and per cubic metre of water displaced for any other vessel, increased by 700 units of account per kilowatt of power in the case of mechanical means of propulsion, and to an amount of 700 units of account per kilowatt of power for uncoupled tugs and pusher craft; for all such vessels, however, the limit of liability is fixed at a minimum of 200,000 units of account;
- b. in respect of claims for passengers, to the amounts provided by the Convention on Limitation of Liability for Maritime Claims, 1976, to which article 49, subparagraph 1, of the federal law on maritime navigation refers;
- c. in respect of any other claims, half of the amounts provided under subparagraph a.

2. The unit of account shall be the special drawing right defined by the International Monetary Fund.

3. Where, at the time when damage was caused, a pusher craft was securely coupled to a pushed barge train, or where a vessel with mechanical means of propulsion was providing propulsion for other vessels coupled to it, the maximum amount of the liability, for the entire coupled train, shall be determined on the basis of the amount of the liability of the pusher craft or of the vessel with mechanical means of propulsion and also on the basis of the amount calculated for the deadweight tonnage or the water displacement of the vessels to which such pusher craft or vessel is coupled, in so far as it is not proved that such pusher craft or such vessel has rendered salvage services to the coupled vessels.”

**United Kingdom**

“...With regard to article 15, paragraph 2(b), the limits of liability which the United Kingdom intend to apply to ships of under 300 tons are 166,677 units of account in respect of claims for loss of life or personal injury, and 83,333 units of account in respect of any other claims.”

**Article 15(4)****Norway**

“Because a higher liability is established for Norwegian drilling vessels according to the Act of 27 May 1983 (No. 30) on changes in the Maritime Act of 20 July 1893, paragraph 324, such drilling vessels are exempted from the regulations of this Convention as specified in article 15 No. 4.”

**Sweden**

“...In accordance with paragraph 4 of article 15 of the Convention, Sweden has established under its national legislation a higher limit of liability for ships constructed for or adapted to and engaged in drilling than that otherwise provided for in article 6 of the Convention.

*LLMC Protocol 1996*

**Protocol of 1996 to amend  
the convention on  
Limitation of Liability  
for maritime claims, 1976**

**(LLMC PROT 1996)**

Done at London, 2 May 1996

Entered into force: 13 May 2004

**Protocole de 1996 modifiant  
la convention de 1976 sur la  
Limitation de la  
Responsabilité en matière  
de créances maritimes**

**(LLMC PROT 1996)**

Signée à Londres le 2 mai 1996

Entrée en vigueur: 13 mai 2004

	Date of deposit of instrument	Date of entry into force
<b>Albania (accession)</b>	7.VI.2004	5.IX.2004
<b>Antigua and Barbuda (accession)</b>	12.X.2009	10.I.2010
<b>Australia (accession)</b>	8.X.2002	13.V.2004
<b>Belgium (accession)</b>	9.X.2009	7.I.2010
<b>Bulgaria (accession)</b>	4.VIII.2005	2.X.2005
<b>Canada (ratification)</b>	9.V.2008	7.VIII.2008
<b>China, Hong Kong (accession)</b>	2.II.2015	3.V.2015
<b>Congo (accession)</b>	19.V.2014	17.VIII.2014
<b>Cook Islands</b>	12.III.2007	12.VI.2007
<b>Croatia (accession)<sup>1</sup></b>	15.V.2006	13.VIII.2006
<b>Cyprus (accession)</b>	23.XII.2005	23.III.2006
<b>Denmark (ratification)</b>	12.IV.2002	13.V.2004
<b>Estonia (accession)<sup>1</sup></b>	16.III.2011	14.VI.2011
<b>Finland (acceptance)</b>	15.IX.2000	13.V.2004
<b>France</b>	24.IV.2007	23.VIII.2007
<b>Germany (ratification)</b>	3.IX.2001	13.V.2004
<b>Greece (accession)</b>	6.VII.2009	4.X.2009
<b>Hungary (accession)</b>	4.VII.2008	2.X.2008
<b>Kenya (accession)</b>	7.VIII.2015	5.X.2015
<b>Iceland (accession)</b>	17.XI.2008	15.II.2009
<b>India (accession)</b>	23.III.2011	21.VI.2011
<b>Ireland (accession)</b>	25.I.2012	24.IV.2012
<b>Jamaica (accession)</b>	19.VIII.2005	17.XII.2005
<b>Japan (accession)</b>	3.V.2006	1.VIII.2006
<b>Latvia</b>	18.IV.2007	17.VII.2007
<b>Liberia (accession)</b>	18.IX.2008	17.XII.2008
<b>Lithuania (accession)<sup>1</sup></b>	14.IX.2007	13.XII.2007
<b>Luxembourg (accession)</b>	21.XI.2005	19.I.2006
<b>Malaysia (accession)<sup>1</sup></b>	12.XI.2008	10.II.2009
<b>Malta (accession)<sup>1</sup></b>	13.II.2004	13.V.2004
<b>Marshall Island (accession)</b>	30.I.2006	30.IV.2006
<b>Mongolia (accession)</b>	28.IX.2011	27.XII.2011
<b>Netherlands (acceptance)<sup>1</sup></b>	23.XII.201	23.III.2011
<b>New Zealand (accession)</b>	4.IV.2014	3.VII.2014
<b>Niue (accession)</b>	27.VI.2012	25.IX.2012
<b>Norway (ratification)<sup>1</sup></b>	17.X.2000	13.V.2004
<b>Palau (accession)</b>	28.IX.2011	28.XII.2011
<b>Poland (accession)<sup>1</sup></b>	17.XI.2011	15.II.2012

*LLMC Protocol 1996**Assistance 1989*

	Date of deposit of instrument	Date of entry into force
<b>Romania</b>	12.III.2007	12.VI.2007
<b>Russian Federation (accession)</b> <sup>1</sup>	25.V.1999	13.V.2004
<b>Samoa (accession)</b>	18.V.2004	16.VIII.2004
<b>Serbia (accession)</b>	19.III.2013	17.VI.2013
<b>Slovenia (accession)</b>	6.VIII.2015	4.X.2015
<b>Sierra Leone (accession)</b>	1.XI.2001	13.V.2004
<b>Spain (accession)</b> <sup>1</sup>	10.I.2005	10.IV.2005
<b>St. Lucia (accession)</b>	20.V.2004	18.VIII.2004
<b>Sweden (accession)</b>	22.VII.2004	20.X.2004
<b>Syrian Arab Republic (accession)</b>	2.IX.2005	1.XII.2005
<b>Tonga (accession)</b>	18.IX.2003	13.V.2004
<b>Turkey (accession)</b> <sup>1</sup>	19.VII.2010	17.X.2010
<b>Tuvalu (accession)</b>	12.I.2009	12.IV.2009
<b>United Kingdom (ratification)</b> <sup>1</sup>	11.VI.1999	13.V.2004

Number of Contracting States: 52

<sup>1</sup> With a reservation or statement

**International Convention on  
Salvage, 1989  
(SALVAGE 1989)**

Done at London: 28 April 1989  
Entered into force: 14 July 1996

**Convention Internationale de  
1989 sur l'Assistance  
(ASSISTANCE 1989)**

Signée a Londres le 28 avril 1989  
Entrée en vigueur: 14 juillet 1996

	Date of deposit of instrument	Date of entry into force
<b>Albania (accession)</b>	14.VI.2006	14.VII.2007
<b>Algeria (accession)</b>	26.III.2012	26.III.2013
<b>Australia (accession)</b> <sup>1</sup>	8.I.1997	8.I.1998
<b>Azerbaijan (accession)</b>	12.VI.2006	12.VI.2007
<b>Belgium (accession)</b>	30.VI.2004	30.VI.2005
<b>Brazil (accession)</b>	29.VII.2009	29.VII.2010
<b>Bulgaria (accession)</b>	14.III.2005	14.III.2006
<b>Canada (ratification)</b> <sup>1</sup>	14.XI.1994	14.VII.1996
<b>China<sup>4,5</sup> (accession)</b> <sup>1</sup>	30.III.1994	14.VII.1996
<b>Congo (accession)</b>	7.IX.2004	7.IX.2005
<b>Croatia (accession)</b> <sup>1</sup>	10.IX.1998	10.IX.1999
<b>Denmark (ratification)</b>	30.V.1995	14.VII.1996
<b>Djibouti (accession)</b>	12.X.2015	12.X.2016
<b>Dominica (accession)</b>	31.VIII.2001	31.VIII.2002
<b>Ecuador (accession)</b>	16.III.2005	16.III.2006
<b>Egypt (accession)</b>	14.III.1991	14.VII.1996
<b>Estonia (accession)</b> <sup>1</sup>	31.VII.2001	31.VII.2002

	Date of deposit of instrument	Date of entry into force
<b>Fiji (accession)</b>	8.III.2016	8.3.2017
<b>Finland (approval) <sup>1</sup></b>	12.I.2007	12.I.2008
<b>France (accession)</b>	20.XII.2001	20.XII.2002
<b>Georgia (accession)</b>	25.VIII.1995	25.VIII.1996
<b>Germany (ratification) <sup>1</sup></b>	8.X.2001	8.X.2002
<b>Greece (accession)</b>	3.VI.1996	3.VI.1997
<b>Guinea (accession)</b>	2.X.2002	2.X.2003
<b>Guyana (accession)</b>	10.XII.1997	10.XII.1998
<b>Iceland (accession)</b>	21.III.2002	21.III.2003
<b>India (accession)</b>	18.X.1995	18.X.1996
<b>Iran (Islamic Republic of) (accession) <sup>1</sup></b>	1.VIII.1994	14.VII.1996
<b>Ireland (ratification) <sup>1</sup></b>	6.I.1995	14.VII.1996
<b>Italy (ratification)</b>	14.VII.1995	14.VII.1996
<b>Jamaica (accession)</b>	28.XI.2013	28.XI.2014
<b>Jordan (accession)</b>	3.X.1995	3.X.1996
<b>Kenya (accession)</b>	21.VII.1999	21.VII.2000
<b>Kiribati (accession)</b>	5.II.2007	5.II.2008
<b>Latvia (accession)</b>	17.III.1999	17.III.2000
<b>Liberia (accession)</b>	18.IX.2008	18.IX.2009
<b>Lithuania (accession) <sup>1</sup></b>	15.XI.1999	15.XI.2000
<b>Marshall Islands (accession)</b>	16.X.1995	16.X.1996
<b>Mauritius (accession)</b>	17.XII.2002	17.XII.2003
<b>Mexico (ratification) <sup>1</sup></b>	10.X.1991	14.VII.1996
<b>Mongolia (accession)</b>	2.IX.2015	2.IX.2016
<b>Montenegro (accession)</b>	19.IV.2012	19.IV.2013
<b>Morocco (accession)</b>	25.XI.2016	25.XI.2017
<b>Netherlands (acceptance) <sup>1, 2</sup></b>	10.XII.1997	10.XII.1998
<b>New Zealand (accession)</b>	16.X.2002	16.X.2003
<b>Nigeria (ratification)</b>	11.X.1990	14.VII.1996
<b>Niue (accession)</b>	27.VI.2012	27.VI.2013
<b>Norway (ratification) <sup>1</sup></b>	3.XII.1996	3.XII.1997
<b>Oman (accession)</b>	14.X.1991	14.VII.1996
<b>Palau (accession)</b>	29.IX.2011	29.IX.2012
<b>Poland (ratification)</b>	16.XII.2005	16.XII.2006
<b>Romania (accession)</b>	18.V.2001	18.V.2002
<b>Russian Federation (ratification) <sup>1</sup></b>	25.V.1999	25.V.2000
<b>Saudi Arabia (accession) <sup>1</sup></b>	16.XII.1991	14.VII.1996
<b>Sierra Leone (accession)</b>	26.VII.2001	26.VII.2002
<b>Slovenia (accession)</b>	23.XII.2005	23.XII.2006
<b>Spain (ratification) <sup>1</sup></b>	27.I.2005	27.I.2006
<b>St. Kitts and Nevis (accession)</b>	7.X.2004	7.X.2005
<b>Sweden (ratification) <sup>1</sup></b>	19.XII.1995	19.XII.1996
<b>Switzerland (ratification)</b>	12.III.1993	14.VII.1996
<b>Syrian Arab Republic (accession) <sup>1</sup></b>	19.III.2002	19.III.2003
<b>Tonga (accession)</b>	18.IX.2003	18.IX.2004
<b>Tunisia (accession) <sup>1</sup></b>	5.V.1999	5.V.2000
<b>Turkey (accession)</b>	27.VI.2014	27.VI.2015
<b>United Arab Emirates (accession)</b>	4.X.1993	14.VII.1996



*Salvage 1989**Assistance 1989*

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>United Kingdom (ratification)<sup>1,3</sup></b>	29.IX.1994	14.VII.1996
<b>United States (ratification)</b>	27.III.1992	14.VII.1996
<b>Vanuatu (accession)</b>	18.II.1999	18.II.2000
<b>Yemen (accession)</b>	23.IX.2008	23.IX.2009

Number of Contracting States: 69

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<sup>1</sup> With a reservation or statement

<sup>2</sup> With a notification

<sup>3</sup> The United Kingdom declared its ratification to be effective in respect of:

The Bailiwick of Jersey

The Isle of Man

Falkland Islands\*

Montserrat

South Georgia and the South Sandwich Islands

Hong Kong\*\* as from 30.V.1997

Anguilla

British Antarctic Territory )

British Indian Ocean Territory )

Cayman Islands )

Pitcairn, Henderson, Ducie and Oeno Islands ) with effect from 22.7.98

St Helena and its Dependencies )

Turks and Caicos Islands )

Virgin Islands )

<sup>4</sup> Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

<sup>5</sup> Applies to Macau Special Administrative Region with effect from 24 June 2005.

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\* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

\*\* Ceased to apply to Hong Kong with effect from 1.VII.1997.

### Declarations, Reservations and Statements

#### Canada

The instrument of ratification of Canada was accompanied by the following reservation: "Pursuant to Article 30 of the International Convention on Salvage, 1989, the Government of Canada reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

#### China

The instrument of accession of the People's Republic of China contained the following statement:

*[Translation]*

"That in accordance with the provisions of article 30, paragraph 1 of the International Convention on Salvage, 1989, the Government of the People's Republic of China reserves the right not to apply the provisions of article 30, paragraphs 1(a), (b) and (d) of the said Convention".

#### Islamic Republic of Iran

The instrument of accession of the Islamic Republic of Iran contained the following reservation:

"The Government of the Islamic Republic of Iran reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b), (c) and (d)".

#### Ireland

The instrument of ratification of Ireland contained the following reservation:

"Reserve the right of Ireland not to apply the provisions of the Convention specified in article 30(1)(a) and (b) thereof".

#### Mexico

The instrument of ratification of Mexico contained the following reservation and declaration:

*[Translation]*

"The Government of Mexico reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b) (c) and (d), pointing out at the same time that it considers salvage as a voluntary act".

#### Norway

The instrument of ratification of the Kingdom of Norway contained the following reservation:

"In accordance with Article 30, subparagraph 1(d) of the Convention, the Kingdom of Norway reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

#### Saudi Arabia<sup>(1)</sup>

The instrument of accession of Saudi Arabia contained the following reservations:

*[Translation]*

"1. This instrument of accession does not in any way whatsoever mean the recognition of Israel; and

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<sup>(1)</sup> The depositary received the following communication dated 27 February 1992 from the Embassy of Israel:

"The Government of the State of Israel has noted that the instrument of accession of Saudi Arabia to the above-mentioned Convention contains a declaration with respect to Israel.

*Salvage 1989**Assistance 1989*

2. The Kingdom of Saudi Arabia reserves its right not to implement the rules of this instrument of accession to the situations indicated in paragraphs (a), (b), (c) and (d) of article 30 of this instrument.”

### **Spain**

The following reservations were made at the time of signature of the Convention:

*[Translation]*

“In accordance with the provisions of article 30.1(a), 30.1(b) and 30.1(d) of the International Convention on Salvage, 1989, the Kingdom of Spain reserves the right not to apply the provisions of the said Convention:

- when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;
- when the salvage operations take place in inland waters and no vessel is involved.

For the sole purposes of these reservations, the Kingdom of Spain understands by ‘inland waters’ not the waters envisaged and regulated under the name of ‘internal waters’ in the United Nations Convention on the Law of the Sea but continental waters that are not in communication with the waters of the sea and are not used by seagoing vessels. In particular, the waters of ports, rivers, estuaries, etc., which are frequented by seagoing vessels are not considered as ‘inland waters’:

- when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

### **Sweden**

The instrument of ratification of the Kingdom of Sweden contained the following reservation:

“Referring to Article 30.1(d) Sweden reserves the right not to apply the provisions of the Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

### **United Kingdom**

The instrument of ratification of the United Kingdom of Great Britain and Northern Ireland contained the following reservation:

“In accordance with the provisions of article 30, paragraph 1(a), (b) and (d) of the Convention, the United Kingdom reserves the right not to apply the provisions of the Convention when:

- (i) the salvage operation takes place in inland waters and all vessels involved are of inland navigation; or
- (ii) the salvage operation takes place in inland waters and no vessel is involved; or .
- (iii) the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

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In the view of the Government of the State of Israel such declaration, which is explicitly of a political character, is incompatible with the purposes and objectives of this Convention and cannot in any way affect whatever obligations are binding upon Saudi Arabia under general International Law or under particular Conventions.

The Government of the State of Israel will, in so far as concerns the substance of the matter, adopt towards Saudi Arabia an attitude of complete reciprocity.”

*Oil pollution preparedness 1990*

**International Convention on  
Oil pollution preparedness,  
response and co-operation  
1990  
(OPRC 1990)**

Done at London: 30 November 1990

Entered into force 13 May 1995.

Status as 30 June 2006

**Convention Internationale de  
1990 sur la Preparation, la  
lutte et la cooperation en  
matière de pollution par les  
hydrocarbures  
(OPRC 1990)**

Signée a Londres le 30 novembre 1990

Entrée en vigueur: 13 Mai 1995.

	Date of deposit of instrument	Date of entry into force
Albania (accession)	2.I.2008	2.IV.2008
Algeria (accession)	8.III.2005	8.VI.2005
Angola (accession)	4.X.2001	4.I.2002
Antigua and Barbuda (accession)	5.I.1999	5.IV.1999
Argentina (ratification) <sup>1</sup>	13.VII.1994	13.V.1995
Australia (accession)	6.VII.1992	13.V.1995
Azerbaijan (accession)	16.VII.2004	16.X.2004
Bahamas (accession)	4.X.2001	4.I.2002
Bahrain (accession)	9.III.2016	9.VI.2016
Bangladesh (accession)	23.VII.2004	23.X.2004
Benin (accession)	5.II.2010	5.V.2010
Brazil (ratification)	21.VII.1998	21.X.1998
Bulgaria (accession)	5.IV.2001	5.VII.2001
Cameroon (accession)	18.IX.2009	18.XII.2009
Canada (accession)	7.III.1994	13.V.1995
Cape Verde (accession)	4.VII.2003	4.X.2003
Chile (accession)	15.X.1997	15.I.1998
China (accession)	30.III.1998	30.VI.1998
Colombia (accession) <sup>1</sup>	11.VI.2008	11.IX.2008
Comoros (accession)	5.I.2000	5.IV.2000
Congo (accession)	7.IX.2004	7.XII.2004
Côte d'Ivoire (accession)	8.VII.2013	8.X.2013
Croatia (accession)	12.I.1998	12.IV.1998
Cuba (accession)	10.IV.2008	10.VII.2008
Denmark (ratification)	22.X.1996	22.I.1997
Djibouti (accession)	19.I.1998	19.IV.1998
Dominica (accession)	31.VIII.2001	30.XI.2001
Ecuador (ratification)	29.I.2002	29.IV.2002
Egypt (ratification)	29.VI.1992	13.V.1995
El Salvador (accession)	9.X.1995	9.I.1996
Estonia (accession)	16.V.2008	16.VIII.2008
Finland (approval)	21.VII.1993	13.V.1995
France (approval)	6.XI.1992	13.V.1995
Gabon (accession)	12.IV.2005	12.VII.2005
Georgia (accession)	20.II.1996	20.V.1996
Germany (ratification)	15.II.1995	15.V.1995
Ghana (accession)	02.VI.2010	02.IX.2010
Greece (ratification)	7.III.1995	7.VI.1995
Guinea (accession)	2.X.2002	2.I.2003

*Oil pollution preparedness 1990*

	Date of deposit of instrument	Date of entry into force
Guyana (accession)	10.XII.1997	10.III.1998
Honduras (accession)	16.XI.2016	16.II.2017
Iceland (ratification)	21.VI.1993	13.V.1995
India (accession)	17.XI.1997	17.II.1998
Iran (Islamic Republic of) (accession)	25.II.1998	25.V.1998
Ireland (accession)	26.IV.2001	26.VII.2001
Israel (ratification)	24.III.1999	24.VI.1999
Italy (ratification)	2.III.1999	2.VI.1999
Jamaica (accession)	8.IX.2000	8.XII.2000
Japan (accession)	17.X.1995	17.I.1996
Jordan (accession)	14.IV.2004	14.VII.2004
Kenya (accession)	21.VII.1999	21.X.1999
Latvia (accession)	30.XI.2001	28.II.2002
Lebanon (ratification)	30.III.2005	30.VI.2005
Liberia (accession)	5.X.1995	5.I.1996
Libyan Arab Jamahiriya (accession)	18.VI.2004	18.IX.2004
Lithuania (accession)	23.XII.2002	23.III.2003
Madagascar (accession)	21.V.2002	21.VIII.2002
Malaysia (accession)	30.VII.1997	30.X.1997
Malta (accession)	21.I.2003	21.IV.2003
Marshall Islands (accession)	16.X.1995	16.I.1996
Mauritania (accession)	22.XI.1999	22.II.2000
Mauritius (accession)	2.XII.1999	2.III.2000
Mexico (accession)	13.V.1994	13.V.1995
Monaco (accession)	19.X.1999	19.I.2000
Morocco (ratification)	29.IV.2003	29.VII.2003
Mozambique (accession)	9.XI.2005	10.II.2006
Myanmar (accession)	15.XII.2016	15.III.2017
Namibia (accession)	08.VI.2007	18.IX.2007
Netherlands (ratification) <sup>2, 3</sup>	1.XII.1994	13.V.1995
New Zealand (accession)	2.VII.1999	2.X.1999
Nigeria (accession)	25.V.1993	13.V.1995
Norway (ratification)	8.III.1994	13.V.1995
Oman (accession)	26.VI.2008	26.IX.2008
Pakistan (accession)	21.VII.1993	13.V.1995
Palau (accession)	29.IX.2011	29.XII.2011
Peru (accession)	24.IV.2002	24.VII.2002
Philippines (accession)	6.II.2014	6.V.2014
Poland (ratification)	12.VI.2003	12.IX.2003
Portugal (accession)	27.II.2006	27.V.2006
Qatar (accession)	8.V.2007	8.VIII.2007
Republic of Korea (accession)	9.XI.1999	9.II.2000
Romania (accession)	17.XI.2000	17.II.2001
Russian Federation (accession)	18.IX.2009	18.XII.2009
Samoa (accession)	18.V.2004	18.VIII.2004
Saudi Arabia (accession)	30.VII.2009	30.XII.2009
Senegal (ratification)	24.III.1994	13.V.1995
Seychelles (accession)	26.VI.1992	13.V.1995
Sierra Leone (accession)	10.III.2008	10.VI.2008

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Singapore (accession)</b>	10.III.1999	10.VI.1999
<b>Slovenia (accession)</b>	31.V.2001	31.VIII.2001
<b>South Africa (accession)</b>	4.VII.2008	4.X.2008
<b>St. Kitts and Nevis (accession)</b>	7.X.2004	7.I.2004
<b>St. Lucia (accession)</b>	20.V.2004	20.VIII.2004
<b>Spain (ratification)</b>	12.I.1994	13.V.1995
<b>Sudan (accession)</b>	21.I.2015	21.IV.2015
<b>Sweden (ratification)</b>	30.III.1992	13.V.1995
<b>Switzerland (accession)</b>	4.VII.1996	4.X.1996
<b>Syrian Arab Republic (accession)</b>	14.III.2003	14.VI.2003
<b>Thailand (accession)</b>	20.IV.2000	20.VII.2000
<b>Togo (accession)</b>	23.IV.2012	23.VII.2012
<b>Tonga (accession)</b>	1.II.1996	1.V.1996
<b>Trinidad and Tobago (accession)</b>	6.III.2000	6.VI.2000
<b>Tunisia (accession)</b>	23.X.1995	23.I.1996
<b>Turkey (accession)</b>	1.VII.2004	1.X.2004
<b>United Kingdom (accession)</b>	16.IX.1997	16.XII.1997
<b>United Republic of Tanzania (accession)</b>	16.V.2006	16.VIII.2006
<b>United States (ratification)</b>	27.III.1992	13.V.1995
<b>Uruguay (signature by confirmation)</b>	27.IX.1994	13.V.1995
<b>Vanuatu (accession)</b>	18.II.1999	18.V.1999
<b>Venezuela (ratification)</b>	12.XII.1994	13.V.1995
<b>Yemen (accession)</b>	10.V.2013	10.VIII.2013

Number of Contracting States: 111

<sup>1</sup> With a reservation.

<sup>2</sup> Applies to Aruba with effect from 13 October 2006.

<sup>3</sup> Applies to the Netherlands Antilles with effect from 18 October 2007.

**Protocol on preparedness,  
response and co-operation  
to pollution incidents by  
hazardous and noxious  
substances, 2000  
(OPRC-HNS 2000)**

Done at London, 15 March 2000  
Entered into force: 14 June 2007

**Protocole sur la préparation,  
la lutte et la coopération en  
matière d'incidents de  
pollution par des substances  
nocives et potentiellement  
dangereuses, 2000  
(OPRC-HNS Protocole)**

Fait à Londres, le 15 Mars 2000  
Entrée en vigueur: 14 Juin 2000

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Albania (accession)</b>	19.I.2015	19.IV.2015
<b>Australia (accession)</b>	16.III.2005	14.VI.2007

*OPRC-HNS 2000*

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Chile (accession)</b>	16.X.2006	14.VI.2007
<b>China (accession) *</b>	19.XI.2009	19.II.2010
<b>Congo (accession)</b>	28.V.2015	28.VIII.2015
<b>Colombia (accession)</b>	11.VI.2008	11.IX.2008
<b>Côte d'Ivoire (accession)</b>	8.VII.2013	8.X.2013
<b>Denmark (ratification)</b>	30.IX.2008	30.XII.2008
<b>Djibouti (accession)</b>	12.X.2015	12.I.2016
<b>Ecuador (accession)</b>	29.I.2002	14.VI.2007
<b>Egypt (accession)</b>	26.V.2004	14.VI.2007
<b>Estonia (ratification)</b>	16.V.2008	16.VIII.2008
<b>Finland (acceptance)</b>	26.VI.2015	26.IX.2015
<b>France (accession)</b>	24.IV.2007	24.VII.2007
<b>Germany (ratification)</b>	2.VI.2009	2.IX.2009
<b>Greece (ratification)</b>	28.V.2003	14.VI.2007
<b>Iran (Islamic Republic of) (accession)</b>	19.IV.2011	19.VII.2011
<b>Japan (accession)</b>	9.III.2007	14.VI.2007
<b>Korea, Republic of (accession)</b>	11.I.2008	11.IV.2008
<b>Liberia (accession)</b>	18.IX.2008	18.XII.2008
<b>Malaysia (accession)</b>	28.XI.2013	28.II.2014
<b>Malta (accession)</b>	21.I.2003	14.VI.2007
<b>Mauritius (accession)</b>	17.VII.2013	17.X.2013
<b>Netherlands (accession)</b>	22.X.2002	14.VI.2007
<b>Norway (accession)</b>	16.II.2012	16.IV.2012
<b>Palau (accession)</b>	29.IX.2011	29.XII.2011
<b>Poland (accession)</b>	12.VI.2003	14.VI.2007
<b>Portugal (accession)</b>	14.VI.2006	14.VI.2007
<b>Singapore (accession)</b>	16.X.2003	14.VI.2007
<b>Slovenia (accession)</b>	5.IV.2006	14.VI.2007
<b>Spain (accession)</b>	27.I.2005	14.VI.2007
<b>Sweden (accession)</b>	23.XII.2002	14.VI.2007
<b>Syria (accession)</b>	10.II.2005	14.VI.2007
<b>Turkey (accession)</b>	3.IX.2013	3.XII.2013
<b>Uruguay (accession)</b>	31.VII.2003	14.VI.2007
<b>Vanuatu (accession)</b>	15.III.2004	14.VI.2007
<b>Yemen (accession)</b>	10.V.2013	10.VIII.2013

Number of Contracting States: 37

\* Extended to Macao Special Administrative Region

*HNS 1996*

**International Convention on  
Liability and Compensation  
for damage in connection  
with the carriage of hazardous  
and noxious substances by  
sea, 1996**  
(HNS 1996)

Done at London, 3 May 1996  
Not yet in force.

**Convention Internationale de 1996  
sur la responsabilité  
et l'indemnisation pour les  
dommages liés au transport  
par mer de substances nocives  
et potentiellement dangereuses**  
(HNS 1996)

Signée a Londres le 3 mai 1996  
Pas encore en vigueur.

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**Date of signature  
or deposit of instrument**

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Angola (accession)	4.X.2001
Cyprus (accession)	10.I.2005
Ethiopia (accession)	14.VII.2009
Hungary (accession)	4.VII.2008
Liberia (accession)	18.IX.2008
Lythuania (accession) <sup>1</sup>	14.IX.2007
Morocco (accession)	19.III.2003
Russian Federation (accession) <sup>1</sup>	20.III.2000
Samoa (accession)	18.V.2004
Sierra Leone (accession)	21.XI.2007
St. Kitts and Nevis (accession)	7.X.2004
Slovenia (accession)	21.VII.2004
Syrian Arab Republic (accession)	27.VI.2008
Tonga (accession)	18.IX.2003

Number of Contracting States: 14.

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<sup>1</sup> With a reservation or statement.

**International Convention on  
Civil Liability for  
Bunker Oil Pollution  
Damage, 2001**  
(BUNKER 2001)

Done at London, 23 March 2001  
Entered into force: 21 November 2008

**Convention Internationale  
sur la responsabilité civile  
pour les dommages dus  
à la pollution par les  
hydrocarbures de soute**  
(BUNKER 2001)

Signée a Londres le 23 Mars 2001  
Entrée en vigueur: 21 Novembre 2008

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
Albania (accession)	30.IV.2010	30.VII.2010
Antigua and Barbuda (accession)	19.XII.2008	19.III.2009
Australia (ratification)	16.III.2009	16.VI.2009
Austria (accession)	30.I.2013	30.IV.2013



*BUNKER 2001*

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Azerbaijan (accession)</b>	22.VI.2010	22.IX.2010
<b>Bahamas (accession)<sup>1</sup></b>	30.I.2008	21.XI.2008
<b>Barbados (accession)</b>	15.X.2009	15.I.2010
<b>Belgium (accession)<sup>1</sup></b>	11.VIII.2009	11.XI.2009
<b>Belize (accession)</b>	22.VIII.2011	22.XI.2011
<b>Bulgaria (accession)<sup>1</sup></b>	6.VII.2007	21.XI.2008
<b>Canada (accession)</b>	2.X.2009	2.I.2010
<b>China (accession)<sup>1</sup></b>	9.XII.2008	9.III.2009
<b>Congo (accession)</b>	19.V.2019	19.VIII.2014
<b>Cook Islands (accession)</b>	21.VIII.2008	21.XI.2008
<b>Côte d'Ivoire (accession)</b>	8.VII.2013	8.X.2013
<b>Croatia (accession)<sup>1</sup></b>	15.XII.2006	21.XI.2008
<b>Cyprus (accession)<sup>1</sup></b>	10.I.2005	21.XI.2008
<b>Czech Republic (accession)</b>	20.XII.2012	20.III.2013
<b>Denmark (ratification)</b>	23.VII.2008	21.XI.2008
<b>Djibouti (accession)</b>	12.X.2015	12.I.2016
<b>Egypt (accession)<sup>1</sup></b>	15.II.2010	15.V.2010
<b>Estonia (accession)<sup>1</sup></b>	5.XII.2006	21.XI.2008
<b>Ethiopia (accession)</b>	17.II.2009	17.IV.2009
<b>Finland (acceptance)<sup>1</sup></b>	18.XI.2008	18.II.2009
<b>Fiji (accession)</b>	8.III.2016	8.VI.2016
<b>France (accession)<sup>1</sup></b>	19.XII.2010	19.I.2011
<b>Germany (ratification)<sup>1</sup></b>	24.IV.2007	21.XI.2008
<b>Greece (accession)</b>	22.XII.2005	21.XI.2008
<b>Hungary (accession)</b>	30.I.2008	21.XI.2008
<b>Indonesia (accession)</b>	11.IX.2014	11.XII.2014
<b>Iran (Islamic Republic of) (accession)</b>	21.XI.2011	21.II.2012
<b>Ireland (accession)<sup>1</sup></b>	23.XII.2008	23.III.2009
<b>Italy (ratification)</b>	18.XI.2010	18.II.2011
<b>Jamaica (accession)</b>	2.IV.2003	21.XI.2008
<b>Jordan (accession)</b>	24.III.2010	24.VI.2010
<b>Kenya (accession)</b>	7.VIII.2015	7.X.2015
<b>Kiribati (accession)</b>	29.VII.2009	29.XII.2009
<b>Korea Democratic People's Republic (accession)</b>	17.VII.2009	17.XII.2009
<b>Latvia (accession)</b>	19.IV.2005	21.XI.2008
<b>Liberia (accession)</b>	21.VIII.2008	21.XI.2008
<b>Lithuania (accession)</b>	14.IX.2007	21.XI.2008
<b>Luxembourg (accession)<sup>1</sup></b>	21.XI.2005	21.XI.2008
<b>Malaysia (accession)</b>	12.XI.2008	12.II.2009
<b>Malta (accession)<sup>1</sup></b>	12.XI.2008	12.II.2009
<b>Marshall Islands (accession)</b>	9.IV.2008	21.XI.2008
<b>Mauritius (accession)</b>	17.VII.2013	17.XII.2013
<b>Mongolia (accession)</b>	28.IX.2011	28.XII.2011
<b>Montenegro (accession)</b>	29.XI.2011	29.II.2012
<b>Morocco (ratification)</b>	14.IV.2010	14.VII.2010
<b>Netherlands (accession)</b>	23.XII.2010	23.III.2011
<b>New Zealand (accession)<sup>1</sup></b>	4.IV.2014	4.VII.2014
<b>Nicaragua (accession)</b>	3.IV.2014	3.VII.2014
<b>Nigeria (accession)</b>	1.XII.2010	1.I.2011
<b>Niue (accession)</b>	18.IV.2012	18.VIII.2012

*SUA 1988*

	Date of deposit of instrument	Date of entry into force
<b>Norway (ratification)<sup>1</sup></b>	25.III.2008	21.XI.2008
<b>Palau (accession)</b>	28.IX.2011	28.XII.2011
<b>Panama (accession)</b>	17.II.2009	17.IV.2009
<b>Poland (accession)<sup>1</sup></b>	15.XII.2006	21.XI.2008
<b>Portugal (accession)</b>	21.VII.2015	21.X.2015
<b>Republic of Korea (accession)</b>	28.VIII.2009	28.XI.2009
<b>Romania (accession)</b>	15.VI.2009	15.IX.2009
<b>Russian Federation (accession)</b>	24.II.2009	24.IV.2009
<b>Saint Kitts and Nevis (accession)</b>	21.XII.2009	21.I.2010
<b>Saint Vincent and the Grenadines (accession)</b>	26.XI.2008	26.II.2009
<b>Samoa (accession)</b>	18.IV.2004	21.XI.2008
<b>Serbia (accession)</b>	8.VII.2010	8.XII.2010
<b>Sierra Leone (accession)</b>	21.XI.2007	21.XI.2008
<b>Singapore (accession)<sup>1</sup></b>	31.III.2006	21.XI.2008
<b>Slovakia (accession)<sup>1</sup></b>	1.IV.2013	1.VIII.2013
<b>Slovenia (accession)</b>	20.IV.2004	21.XI.2008
<b>Spain (ratification)<sup>1</sup></b>	10.XII.2003	21.XI.2008
<b>St. Lucia (accession)</b>	26.V.2016	26.VIII.2016
<b>Sweden (ratification)<sup>1</sup></b>	3.VI.2013	3.IX.2013
<b>Switzerland (accession)</b>	24.IX.2013	24.XII.2013
<b>Syrian Arab Republic (accession)<sup>1</sup></b>	24.IV.2009	24.VII.2009
<b>Togo (accession)</b>	23.IV.2012	23.VII.2012
<b>Tonga (accession)</b>	18.IX.2003	21.XI.2008
<b>Tunisia (accession)<sup>1</sup></b>	5.IX.2011	5.XII.2011
<b>Turkey (accession)</b>	12.IX.2013	12.XII.2013
<b>Tuvalu (accession)</b>	12.I.2009	12.IV.2009
<b>United Kingdom (ratification)<sup>1</sup></b>	29.VI.2006	21.XI.2008
<b>Vanuatu (accession)</b>	20.VIII.2008	21.XI.2008
<b>Vietnam (accession)</b>	18.VI.2010	18.IX.2010

Number of Contracting States: 83

<sup>1</sup> With a reservation or declaration.

*SUA 1988*

**Convention for the  
suppression of unlawful acts  
against the safety of  
maritime navigation, 1988  
(SUA 1988)**

Done at Rome, 10 March 1988  
Entry into force: 1 March 1992.

**Convention pour la  
répression d'actes illicites  
contre la sécurité de la  
navigation maritime, 1988  
(SUA 1988)**

Signée a Rome le 10 Mars 1988  
Entrée en vigueur: 1 Mars 1992.

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Afghanistan (accession)</b>	23.IX.2003	22.XII.2003
<b>Albania (accession)</b>	19.VI.2002	17.IX.2002
<b>Algeria (accession)<sup>1</sup></b>	11.II.1998	12.V.1998
<b>Andorra, Principality of (accession)<sup>1</sup></b>	17.VII.2006	15.X.2006
<b>Antigua and Barbuda (accession)</b>	12.X.2009	10.I.2010
<b>Argentina (ratification)</b>	17.VIII.1993	15.XI.1993
<b>Armenia (accession)<sup>1</sup></b>	8.VI.2005	6.IX.2005
<b>Australia (accession)</b>	19.II.1993	20.V.1993
<b>Austria (ratification)</b>	28.XII.1989	1.III.1992
<b>Azerbaijan (accession)<sup>1</sup></b>	26.I.2004	25.IV.2004
<b>Bahamas (accession)</b>	25.X.2005	23.I.2006
<b>Bahrain (accession)</b>	21.X.2005	19.I.2006
<b>Bangladesh (accession)</b>	9.VI.2005	7.IX.2005
<b>Barbados (accession)</b>	6.V.1994	4.VIII.1994
<b>Belarus (accession)</b>	4.XII.2002	4.III.2003
<b>Belgium (accession)</b>	11.IV.2005	10.VII.2005
<b>Benin (accession)</b>	31.VIII.2006	29.XI.2006
<b>Bolivia (accession)</b>	13.II.2002	14.V.2002
<b>Bosnia and Herzegovina (accession)</b>	28.VII.2003	26.X.2003
<b>Botswana (accession)</b>	14.IX.2000	13.XII.2000
<b>Brazil (ratification)<sup>1</sup></b>	25.X.2005	23.I.2006
<b>Brunei Darussalam (ratification)</b>	4.XII.2003	3.III.2004
<b>Bulgaria (ratification)</b>	8.VII.1999	6.X.1999
<b>Burkina Faso (accession)</b>	15.I.2004	14.IV.2004
<b>Cambodia (accession)</b>	18.VIII.2006	16.XI.2006
<b>Canada (ratification)<sup>2</sup></b>	18.VI.1993	16.IX.1993
<b>Cape Verde (accession)</b>	3.I.2003	3.IV.2003
<b>Chile (ratification)</b>	22.IV.1994	21.VII.1994
<b>China (ratification)<sup>1, 7</sup></b>	20.VIII.1991	1.III.1992
<b>Comoros (accession)</b>	6.III.2008	4.VI.2008
<b>Congo (accession)</b>	28.V.2015	26.VIII.2015
<b>Cook Islands (accession)</b>	12.III.2007	10.VI.2007
<b>Costa Rica (ratification)</b>	25.III.2003	23.VI.2003
<b>Côte d'Ivoire (accession)</b>	23.III.2012	21.VI.2012
<b>Croatia (accession)</b>	18.VIII.2005	16.XI.2005
<b>Cuba (accession)<sup>2</sup></b>	20.XI.2001	18.II.2002
<b>Cyprus (accession)</b>	2.II.2000	2.V.2000
<b>Czech Republic (accession)</b>	10.XII.2004	10.III.2005

*SUA 1988*

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Denmark (ratification) <sup>1</sup></b>	25.VIII.1995	23.XI.1995
<b>Djibouti (accession)</b>	9.VI.2004	7.IX.2004
<b>Dominica (accession)</b>	31.VIII.2001	29.XI.2001
<b>Dominican Republic (accession)</b>	3.VII.2008	1.X.2008
<b>Ecuador (accession)</b>	10.III.2003	8.VI.2003
<b>Egypt (ratification) <sup>1</sup></b>	8.I.1993	8.IV.1993
<b>El Salvador (accession)</b>	7.XII.2000	7.III.2001
<b>Equatorial Guinea (accession)</b>	15.I.2004	14.IV.2004
<b>Estonia (accession)</b>	15.II.2002	16.V.2002
<b>Ethiopia (accession)</b>	29.VII.2013	27.X.2013
<b>Finland (ratification)</b>	12.XI.1998	10.II.1999
<b>Fiji (accession)</b>	21.V.2008	19.VIII.2008
<b>France (approval) <sup>1</sup></b>	2.XII.1991	1.III.1992
<b>Gambia (accession)</b>	1.XI.1991	1.III.1992
<b>Georgia (accession)</b>	11.VIII.2006	9.XI.2006
<b>Germany<sup>3</sup> (accession)</b>	6.XI.1990	1.III.1992
<b>Ghana (accession)</b>	1.XI.2002	30.I.2003
<b>Greece (ratification)</b>	11.VI.1993	9.IX.1993
<b>Grenada (accession)</b>	9.I.2002	9.IV.2002
<b>Guatemala (accession)</b>	26.VIII.2009	24.XI.2009
<b>Guinea (accession)</b>	1.II.2005	2.V.2005
<b>Guinea Bissau (accession)</b>	14.X.2008	12.I.2009
<b>Guyana (accession)</b>	30.I.2003	30.IV.2003
<b>Honduras (accession)</b>	17.V.2005	15.VIII.2005
<b>Hungary (ratification)</b>	9.XI.1989	1.III.1992
<b>Iceland (accession)</b>	28.V.2002	26.VIII.2002
<b>India (accession) <sup>1</sup></b>	15.X.1999	13.I.2000
<b>Iran (Islamic Republic of)(accession) <sup>1</sup></b>	30.X.2009	28.I.2010
<b>Ireland (accession)</b>	10.IX.2004	9.XII.2004
<b>Israel (ratification) <sup>1</sup></b>	6.I.2009	6.IV.2009
<b>Iraq (accession)</b>	21.III.2014	19.VI.2014
<b>Italy (ratification)</b>	26.I.1990	1.III.1992
<b>Jamaica (accession) <sup>2</sup></b>	17.VIII.2005	15.XI.2005
<b>Japan (accession)</b>	24.IV.1998	23.VII.1998
<b>Jordan (accession)</b>	2.VII.2004	30.IX.2004
<b>Kazakhstan (accession)</b>	24.XI.2003	22.II.2004
<b>Kenya (accession)</b>	21.I.2002	21.IV.2002
<b>Kiribati (accession)</b>	17.XI.2005	16.II.2006
<b>Kuwait (accession)</b>	30.VI.2003	28.IX.2003
<b>Latvia (accession)</b>	4.XII.2002	4.III.2003
<b>Lao People's Democratic Republic</b>	20.III.2012	18.VI.2012
<b>Lebanon (accession)</b>	16.XII.1994	16.III.1995
<b>Lesotho (accession)</b>	7.XI.2011	5.II.2012
<b>Liberia (ratification)</b>	5.X.1995	3.I.1996
<b>Libyan Arab Jamahiriya (accession)</b>	8.VIII.2002	6.XI.2002
<b>Liechtenstein (accession)</b>	8.XI.2002	6.II.2003
<b>Lithuania (accession)</b>	30.I.2003	30.IV.2003
<b>Luxembourg (accession)</b>	5.I.2011	5.IV.2011
<b>Macedonia (former Yugoslav Republic of)</b>	7.VIII.2007	2.X.2007

*SUA 1988*

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Madagascar (accession)</b>	15.IX.2006	14.XII.2006
<b>Malawi (accession)</b>	10.I.2014	10.IV.2014
<b>Maldives (accession)</b>	25.II.2014	26.V.2014
<b>Mali (accession)</b>	29.IV.2002	28.VII.2002
<b>Malta (accession)</b>	20.XI.2001	18.II.2002
<b>Marshall Islands (accession)</b>	29.XI.1994	27.II.1995
<b>Mauritania</b>	17.I.2008	16.IV.2008
<b>Mauritius (accession)</b>	3.VIII.2004	1.XI.2004
<b>Mexico (accession)<sup>1</sup></b>	13.V.1994	11.VIII.1994
<b>Micronesia (accession)</b>	10.II.2003	11.V.2003
<b>Moldova (accession)<sup>1</sup></b>	11.X.2005	9.I.2006
<b>Monaco (accession)</b>	25.I.2002	25.IV.2002
<b>Mongolia (accession)</b>	22.XI.2005	20.II.2006
<b>Morocco (ratification)</b>	8.I.2002	8.IV.2002
<b>Mozambique (accession)<sup>1</sup></b>	8.I.2003	8.IV.2003
<b>Myanmar (accession)<sup>1</sup></b>	19.IX.2003	18.XII.2003
<b>Namibia (accession)</b>	10.VII.2004	18.X.2004
<b>Nauru (accession)</b>	11.VIII.2005	9.XI.2005
<b>Netherlands (acceptance)<sup>5</sup></b>	5.III.1992	3.VI.1992
<b>New Zealand (ratification)</b>	10.VI.1999	8.IX.1999
<b>Nicaragua (accession)</b>	4.VII.2007	2.X.2007
<b>Niger (accession)</b>	30.VIII.2006	28.XI.2006
<b>Nigeria (ratification)</b>	24.II.2004	24.V.2004
<b>Niue (accession)</b>	22.VI.2009	20.IX.2009
<b>Norway (ratification)</b>	18.IV.1991	1.III.1992
<b>Oman (accession)</b>	24.IX.1990	1.III.1992
<b>Pakistan (accession)</b>	20.IX.2000	19.IX.2000
<b>Palau (accession)</b>	4.XII.2001	4.III.2002
<b>Panama (accession)</b>	3.VII.2002	1.X.2002
<b>Paraguay (accession)<sup>2</sup></b>	12.XI.2004	10.II.2005
<b>Peru (accession)</b>	19.VII.2001	17.X.2001
<b>Philippines (ratification)</b>	6.I.2004	5.IV.2004
<b>Poland (ratification)</b>	25.VI.1991	1.III.1992
<b>Portugal (accession)<sup>1</sup></b>	5.I.1996	4.IV.1996
<b>Qatar (accession)<sup>1</sup></b>	18.IX.2003	17.XII.2003
<b>Republic of Korea (accession)</b>	14.V.2003	12.VIII.2003
<b>Romania (accession)</b>	2.VI.1993	31.VIII.1993
<b>Russian Federation (ratification)</b>	4.V.2001	2.VIII.2001
<b>St. Kitts and Nevis (accession)</b>	17.I.2002	17.IV.2002
<b>St. Lucia (accession)</b>	20.V.2004	18.VIII.2004
<b>St. Vincent and the Grenadines (accession)</b>	9.X.2001	7.I.2002
<b>Samoa (accession)</b>	18.V.2004	16.VIII.2004
<b>San Marino (accession)</b>	15.XII.2014	15.III.2015
<b>Sao Tome and Principe</b>	5.V.2006	3.VIII.2006
<b>Saudi Arabia (accession)<sup>6</sup></b>	2.II.2006	3.V.2006
<b>Senegal (accession)</b>	9.VIII.2004	7.XI.2004
<b>Serbia (accession)<sup>8</sup></b>	—	3.VI.2006
<b>Seychelles (ratification)</b>	24.I.1989	1.III.1992
<b>Singapore (accession)</b>	3.II.2004	3.V.2004

*SUA 1988*

	Date of deposit of instrument	Date of entry into force
<b>Slovakia (accession)</b>	8.XII.2000	8.III.2001
<b>Slovenia (accession)</b>	18.VII.2003	16.X.2003
<b>South Africa (accession)</b>	8.VII.2005	6.X.2005
<b>Spain (ratification)</b>	7.VII.1989	1.III.1992
<b>Sri Lanka (accession)</b>	4.IX.2000	3.XII.2000
<b>Sudan (accession)</b>	22.V.2000	20.VIII.2000
<b>Swaziland (accession)</b>	17.IV.2003	16.VII.2003
<b>Sweden (ratification)</b>	13.IX.1990	1.III.1992
<b>Switzerland (ratification)</b>	12.III.1993	10.VI.1993
<b>Syrian Arab Republic (accession)</b>	24.III.2003	22.VI.2003
<b>Tajikistan (accession)</b>	12.VIII.2005	10.XI.2005
<b>Tanzania (accession)</b>	8.XII.2016	8.III.2017
<b>Togo (accession)</b>	10.III.2003	8.VI.2003
<b>Tonga (accession)</b>	6.XII.2002	6.III.2003
<b>Trinidad and Tobago (accession)</b>	27.VII.1989	1.III.1992
<b>Tunisia (accession)<sup>1</sup></b>	6.III.1998	4.VI.1998
<b>Turkey (ratification)<sup>1</sup></b>	6.III.1998	4.VI.1998
<b>Turkmenistan (accession)</b>	8.VI.1999	6.IX.1999
<b>Tuvalu (accession)</b>	2.XII.2005	2.III.2006
<b>Uganda (accession)</b>	11.XI.2003	9.II.2004
<b>Ukraine (ratification)</b>	21.IV.1994	20.VII.1994
<b>United Arab Emirates (accession)<sup>1</sup></b>	15.IX.2005	14.XII.2005
<b>United Kingdom (ratification)<sup>1,4</sup></b>	3.V.1991	1.III.1992
<b>United Republic of Tanzania (accession)</b>	11.V.2005	9.VIII.2005
<b>United States (ratification)</b>	6.XII.1994	6.III.1995
<b>Uruguay (accession)</b>	10.VIII.2001	8.XI.2001
<b>Uzbekistan (accession)</b>	25.IX.2000	24.XII.2000
<b>Vanuatu (accession)</b>	18.II.1999	19.V.1999
<b>Viet Nam (accession)</b>	12.VII.2002	10.X.2002
<b>Yemen (accession)</b>	30.VI.2000	28.IX.2000

Contracting States: 164.

<sup>1</sup> With a reservation, declaration or statement.

<sup>2</sup> With a notification under article 6.

<sup>3</sup> On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded\* to the Convention on 14 April 1989.

\* With a reservation.

<sup>4</sup> The United Kingdom declared its ratification to be effective also in respect of the Isle of Man (notification received 8 February 1999).

<sup>5</sup> Extended to Aruba from 15 December 2004 the date the notification was received.

<sup>6</sup> With a reservation under articles 11 and 16, paragraph 1

<sup>7</sup> China declared that the Convention would be effective in respect of the Hong Kong Special Administrative Region (HKSAR) with effect from 20 February 2006.

<sup>8</sup> Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Convention with effect from the same date, i.e. 3 June 2006.

*SUA Protocol 1988*

**Protocol for the  
suppression of unlawful acts  
against the safety of fixed  
platforms located on the  
continental shelf, 1988**

**(SUA PROTOCOL 1988)**

Done at Rome, 10 March 1988  
Entry into force: 1 March 1992.

**Protocole pour la  
répression d'actes illicites  
contre la sécurité des  
plates-formes fixes situées sur  
le plateau continental, 1988**

**(SUA PROTOCOL 1988)**

Signée a Rome le 10 Mars 1988  
Entrée en vigueur: 1 Mars 1992.

	Date of deposit of instrument	Date of entry into force
<b>Afghanistan (accession)</b>	23.IX.2003	22.XII.2003
<b>Albania (accession)</b>	19.VI.2002	17.IX.2002
<b>Algeria (accession)</b>	30.VI.2006	28.IX.2006
<b>Andorra (accession)</b>	17.VII.2006	15.X.2006
<b>Andorra, Principality of (accession)</b>	17.VII.2006	15.X.2006
<b>Antigua and Barbuda (accession)</b>	12.X.2009	10.I.2010
<b>Argentina (ratification)</b>	26.XI.2003	24.II.2004
<b>Armenia (accession)</b>	8.VI.2005	6.IX.2005
<b>Australia (accession)</b>	19.II.1993	20.V.1993
<b>Austria (accession)</b>	28.XII.1989	1.III.1992
<b>Azerbaijan (accession)</b>	26.I.2004	25.IV.2004
<b>Bahamas (accession)</b>	25.X.2005	23.I.2006
<b>Bahrain (accession)</b>	21.X.2005	19.I.2006
<b>Bangladesh (accession)</b>	9.VI.2005	7.IX.2005
<b>Barbados (accession)</b>	6.V.1994	4.VIII.1994
<b>Belarus (accession)</b>	4.XII.2002	4.III.2003
<b>Belgium (accession)</b>	11.IV.2005	10.VII.2005
<b>Benin (accession)</b>	31.VIII.2006	29.XI.2006
<b>Bolivia (accession)</b>	13.II.2002	14.V.2002
<b>Bosnia and Herzegovina (accession)</b>	28.VII.2003	26.X.2003
<b>Botswana (accession)</b>	14.IX.2000	13.XII.2000
<b>Brazil (ratification)<sup>1</sup></b>	25.X.2005	23.I.2006
<b>Brunei Darussalam (ratification)</b>	4.XII.2003	3.III.2004
<b>Bulgaria (ratification)</b>	8.VII.1999	6.X.1999
<b>Burkina Faso (accession)</b>	14.I.2004	13.IV.2004
<b>Canada (ratification)<sup>1</sup></b>	18.VI.1993	16.IX.1993
<b>Cambodia (accession)</b>	18.VIII.2006	16.XI.2006
<b>Cape Verde (accession)</b>	3.I.2003	3.IV.2003
<b>Chile (ratification)</b>	22.IV.1994	21.VII.1994
<b>China (ratification)<sup>2, 6</sup></b>	20.VIII.1991	1.III.1992
<b>Comoros (accession)</b>	6.III.2008	4.VI.2008
<b>Congo (accession)</b>	28.V.2015	26.VIII.2015
<b>Cook Islands (accession)</b>	12.III.2007	10.VI.2007
<b>Costa Rica (ratification)</b>	25.III.2003	23.VI.2003
<b>Côte d'Ivoire (accession)</b>	23.III.2012	21.VI.2012
<b>Croatia (accession)</b>	18.VIII.2005	16.XI.2005
<b>Cuba (accession)<sup>2</sup></b>	20.XI.2001	18.II.2002

*SUA Protocol 1988*

	Date of deposit of instrument	Date of entry into force
Cyprus (accession)	2.II.2000	2.V.2000
Czech Republic (accession)	10.XII.2004	10.III.2005
Denmark (ratification) <sup>2</sup>	25.VIII.1995	23.XI.1995
Djibouti (accession)	9.VI.2004	7.IX.2004
Dominica (accession)	12.X.2004	10.I.2005
Dominican Republic (accession)	12.VIII.2009	10.XI.2009
Ecuador (accession)	10.III.2003	8.VI.2003
Egypt (ratification) <sup>2</sup>	8.I.1993	8.IV.1993
El Salvador (accession)	7.XII.2000	7.III.2001
Equatorial Guinea (accession)	15.I.2004	14.IV.2004
Estonia (accession)	28.I.2004	27.IV.2004
Fiji (accession)	21.V.2008	19.VIII.2008
Finland (accession)	28.IV.2000	27.VII.2000
France (approval) <sup>2</sup>	2.XII.1991	1.III.1992
Georgia (accession)	11.VIII.2006	9.XI.2006
Germany (accession) <sup>3</sup>	6.XI.1990	1.III.1992
Ghana (accession)	1.XI.2002	30.I.2003
Greece (ratification)	11.VI.1993	9.IX.1993
Grenada (accession)	9.I.2002	9.IV.2002
Guatemala (accession)	26.VIII.2009	24.XI.2009
Guinea (accession)	1.II.2005	2.V.2005
Guinea Bissau (accession)	14.X.2008	12.I.2009
Guyana (accession)	30.I.2003	30.IV.2003
Honduras (accession)	17.V.2005	15.VIII.2005
Hungary (ratification)	9.XI.1989	1.III.1992
Iceland (accession)	28.V.2002	26.VIII.2002
India (accession) <sup>2</sup>	15.X.1999	13.I.2000
Iran (Islamic Republic of) (accession) <sup>1</sup>	30.X.2009	28.I.2010
Ireland (accession)	10.IX.2004	9.XII.2004
Israel (ratification) <sup>1</sup>	6.I.2009	6.IV.2009
Italy (ratification)	26.I.1990	1.III.1992
Jamaica (accession) <sup>1</sup>	19.VIII.2005	17.XI.2005
Japan (accession)	24.IV.1998	23.VII.1998
Jordan (accession)	2.VII.2004	30.IX.2004
Kazakhstan (accession)	24.XI.2003	22.II.2004
Kenya (accession)	21.I.2002	21.IV.2002
Kiribati (accession)	17.XI.2005	16.II.2006
Kuwait (accession)	30.VI.2003	28.IX.2003
Lao People's Democratic Republic	20.III.2012	18.VI.2012
Latvia (accession)	4.XII.2002	4.III.2003
Lebanon (accession)	16.XII.1994	16.III.1995
Lesotho (accession)	25.VI.2013	23.IX.2013
Liberia (ratification)	5.X.1995	3.I.1996
Libyan Arab Jamahiriya (accession)	8.VIII.2002	6.XI.2002
Liechtenstein (accession)	8.XI.2002	6.II.2003
Lithuania (accession)	30.I.2003	30.IV.2003
Macedonia (former Yugoslav Republic of)	7.VIII.2007	5.XI.2007
Madagascar (accession)	15.IX.2006	14.XII.2006
Malawi (accession)	10.I.2014	10.IV.2014



*SUA Protocol 1988*

	Date of deposit of instrument	Date of entry into force
<b>Maldives (accession)</b>	25.II.2014	26.V.2014
<b>Mali (accession)</b>	29.IV.2002	28.VII.2002
<b>Malta (accession)</b>	20.XI.2001	18.II.2002
<b>Marshall Islands (accession)</b>	16.X.1995	14.I.1996
<b>Mauritania</b>	17.I.2008	16.IV.2008
<b>Mauritius (accession)</b>	3.VIII.2004	1.XI.2004
<b>Mexico (accession) <sup>1</sup></b>	13.V.1994	11.VIII.1994
<b>Moldova (accession) <sup>2</sup></b>	11.X.2005	9.I.2006
<b>Monaco (accession)</b>	25.I.2002	25.IV.2002
<b>Mongolia (accession)</b>	22.XI.2005	20.II.2006
<b>Montenegro (succession) <sup>7</sup></b>	---	3.VI.2006
<b>Morocco (ratification)</b>	8.I.2002	8.IV.2002
<b>Mozambique (accession)</b>	8.I.2003	8.IV.2003
<b>Myanmar (accession)</b>	19.IX.2003	18.XII.2003
<b>Namibia (accession)</b>	7.IX.2005	6.XII.2005
<b>Nauru (accession)</b>	11.VIII.2005	9.XI.2005
<b>Netherlands (acceptance) <sup>2, 5</sup></b>	5.III.1992	3.VI.1992
<b>New Zealand (ratification)</b>	10.VI.1999	8.IX.1999
<b>Nicaragua (accession)</b>	4.VII.2007	2.X.2007
<b>Niger (accession)</b>	30.VIII.2006	28.XI.2006
<b>Nigeria (ratification)</b>	18.VI.2015	16.IX.2015
<b>Niue (accession)</b>	22.VI.2009	20.IX.2009
<b>Norway (ratification)</b>	18.IV.1991	1.III.1992
<b>Oman (accession)</b>	24.IX.1990	1.III.1992
<b>Pakistan (accession)</b>	20.IX.2000	10.XII.2000
<b>Palau (accession)</b>	4.XII.2001	4.III.2002
<b>Panama (accession)</b>	3.VII.2002	1.X.2002
<b>Paraguay (accession) <sup>1</sup></b>	12.XI.2004	10.II.2005
<b>Peru (accession)</b>	19.VII.2001	17.X.2001
<b>Philippines (ratification)</b>	6.I.2004	5.IV.2004
<b>Poland (ratification)</b>	25.VI.1991	1.III.1992
<b>Portugal (accession)</b>	5.I.1996	4.IV.1996
<b>Qatar (accession)</b>	18.IX.2003	17.XII.2003
<b>Republic of Korea (accession)</b>	10.VI.2003	8.IX.2003
<b>Romania (accession)</b>	2.VI.1993	31.VIII.1993
<b>Russian Federation (ratification)</b>	4.V.2001	2.VIII.2001
<b>St. Lucia (accession)</b>	20.V.2004	18.VIII.2004
<b>St. Vincent and the Grenadines (accession)</b>	9.X.2001	7.I.2002
<b>Sao Tome and Principe</b>	5.V.2006	3.VIII.2006
<b>Saudi Arabia (accession)</b>	2.II.2006	3.V.2006
<b>Senegal (accession)</b>	9.VIII.2004	7.XI.2004
<b>Serbia (succession) <sup>7</sup></b>	---	3.VI.2006
<b>Seychelles (ratification)</b>	24.I.1989	1.III.1992
<b>Singapore (accession)</b>	12.VIII.2015	10.XI.2015
<b>Slovakia (accession)</b>	8.XII.2000	8.III.2001
<b>Slovenia (accession)</b>	18.VII.2003	16.X.2003
<b>South Africa (accession)</b>	8.VII.2005	6.X.2005
<b>Spain (ratification)</b>	7.VII.1989	1.III.1992
<b>Sudan (accession)</b>	22.V.2000	20.VIII.2000

*SUA Protocol 1988*

	<b>Date of deposit of instrument</b>	<b>Date of entry into force</b>
<b>Swaziland (accession)</b>	17.IV.2003	16.VII.2003
<b>Sweden (ratification)</b>	13.IX.1990	1.III.1992
<b>Switzerland (ratification)</b>	12.III.1993	10.VI.1993
<b>Syrian Arab Republic (accession)</b>	24.III.2003	22.VI.2003
<b>Tajikistan (accession)</b>	12.VIII.2005	10.XI.2005
<b>Togo (accession)</b>	10.III.2003	8.VI.2003
<b>Tonga (accession)</b>	6.XII.2002	6.III.2003
<b>Trinidad and Tobago (accession)</b>	27.VII.1989	1.III.1992
<b>Tunisia (accession)</b>	6.III.1998	4.VI.1998
<b>Turkey (ratification)<sup>2</sup></b>	6.III.1998	4.VI.1998
<b>Turkmenistan (accession)</b>	8.VI.1999	6.IX.1999
<b>Tuvalu (accession)</b>	2.XII.2005	2.III.2006
<b>Ukraine (ratification)</b>	21.IV.1994	20.VII.1994
<b>United Arab Emirates (accession)<sup>2</sup></b>	15.IX.2005	14.XII.2005
<b>United Kingdom (ratification)<sup>2,4</sup></b>	3.V.1991	1.III.1992
<b>United States (ratification)</b>	6.XII.1994	6.III.1995
<b>Uruguay (accession)</b>	10.VIII.2001	8.XI.2001
<b>Uzbekistan (accession)</b>	25.IX.2000	24.XII.2000
<b>Vanuatu (accession)</b>	18.II.1999	19.V.1999
<b>Viet Nam (accession)</b>	12.VII.2002	10.X.2002
<b>Yemen (accession)</b>	30.VI.2000	28.IX.2000

Number of Contracting States: 156

<sup>1</sup> With a notification under article 3.

<sup>2</sup> With a reservation, declaration or statement.

<sup>3</sup> On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded\* to the Convention on 14 April 1989.

\* With a reservation.

<sup>4</sup> The United Kingdom declared its ratification to be effective also in respect of the Isle of Man. (notification received 8 February 1999).

<sup>5</sup> Applies to Aruba with effect from 17 January 2006.

<sup>6</sup> China declared that the Protocol would be effective in respect of the Hong Kong Special Administrative Region (HKSAR) with effect from 20 February 2006.

<sup>7</sup> Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Protocol with effect from the same date, i.e. 3 June 2006.

*SUA Protocol 2005*

**Protocol of 2005 to the  
Convention for the  
suppression of unlawful acts  
against the safety of  
maritime navigation  
(SUA PROT 2005)**

Done at London, 14 October 2005  
Entry into force: 28 July 2010

**Protocole de 2005 à la  
Convention pour la  
répression d'actes illicites  
contre la sécurité de la  
navigation maritime  
(SUA PROT 2005)**

Signée à Londres le 10 Octobre 1988  
Entrée en vigueur: 28 Juillet 2010

	Date of deposit of instrument	Date of entry into force
Algeria (accession)	25.I.2011	25.IV.2011
Antigua and Barbuda (accession)	24.XI.2015	22.II.2016
Austria (ratification)	18.VI.2010	16.IX.2010
Bulgaria (ratification)	7.X.2010	5.I.2011
Congo (accession)	28.V.2015	26.VIII.2015
Côte d'Ivoire (accession)	23.III.2012	21.VI.2012
Cuba (accession)	10.IV.2014	9.VII.2014
Dominican Republic (accession)	9.III.2010	28.VII.2010
Djibouti (accession)	23.IV.2014	22.VII.2014
Estonia (ratification)	16.V.2008	28.VII.2010
Fiji (accession)	21.V.2008	28.VII.2010
Germany (accession)	29.01.2016	28.IV.2016
Greece (ratification)	11.IX.2013	10.XII.2013
Jamaica (accession)	28.XI.2013	26.II.2014
Latvia (accession)	16XI.2009	28.VII.2010
Liechtenstein (accession)	28.VIII.2009	28.VII.2010
Marshall Islands (accession)	9.V.2008	28.VII.2010
Mauritania (accession)	21.VIII.2013	19.XI.2013
Netherlands (acceptance) <sup>1</sup>	1.III.2011	30.V.2011
Nauru (accession)	29.IV.2010	28.VII.2010
Norway (ratification)	30.IX.2013	29.XII.2013
Palau (accession)	29.IX.2011	28.XII.2011
Panama (accession)	24.II.2011	25.V.2011
Portugal (ratification)	1.IX.2015	30.XI.2015
Qatar (accession)	10.I.2013	10.IV.2014
Saint Lucia (accession)	8.XI.2012	6.II.2013
Saint Vincent and the Grenadines (accession)	5.VII.2010	3.X.2010
San Marino (accession)	15.XII.2014	15.III.2015
Saudi Arabia (accession)	31.VII.2013	29.X.2013
Spain (ratification)	16.IV.2008	28.VII.2010
Sweden (ratification)	22.IX.2014	21.XII.2014
Switzerland (accession)	15.X.2008	28.VII.2010
United States (ratification)	28.VIII.2015	26.XI.2015
Uruguay (accession)	29.VI.2015	28.VII.2015
Vanuatu (accession)	20.VIII.2008	28.VII.2010

Number of Contracting States: 35

<sup>1</sup> Acceptance for the European part of the Netherlands and Caribbean part of the Netherlands (the latter comprising Bonaire, Saint Eustatius and Saba) only.

**STATUS OF THE RATIFICATIONS OF  
AND ACCESSIONS TO UNITED NATIONS  
AND UNITED NATIONS/IMO CONVENTIONS  
IN THE FIELD OF  
PUBLIC AND PRIVATE MARITIME LAW**

**ETAT DES RATIFICATIONS ET ADHESIONS  
AUX CONVENTIONS DES NATIONS UNIES ET  
AUX CONVENTIONS DES NATIONS UNIES/OMI  
EN MATIERE DE  
DROIT MARITIME PUBLIC  
ET DE DROIT MARITIME PRIVE**

r	=	ratification
a	=	accession
A	=	acceptance
AA	=	approval
S	=	definitive signature

*Notes de l'éditeur / Editor's notes:*

- Les dates mentionnées sont les dates du dépôt des instruments.
- The dates mentioned are the dates of the deposit of instruments.

*Code of conduct 1974**Code de conduite 1974***United Nations Convention on a****Convention des Nations Unies sur  
un****Code of Conduct  
for liner conferences****Code de Conduite  
des conférences maritimes**

Geneva, 6 April 1974

Genève, 6 avril 1974

Entered into force: 6 October 1983

Entrée en vigueur: 6 octobre 1983

<b>Algeria</b>	<b>(r)</b>	12.XII.1986
<b>Bangladesh</b>	<b>(a)</b>	24.VII.1975
<b>Barbados</b>	<b>(a)</b>	29.X.1980
<b>Belgium</b>	<b>(r)</b>	30.IX.1987
<b>Benin</b>	<b>(a)</b>	27.X.1975
<b>Bulgaria</b>	<b>(a)</b>	12.VII.1979
<b>Burkina Faso</b>	<b>(a)</b>	30.III.1989
<b>Burundi</b>	<b>(a)</b>	2.XI.2005
<b>Cameroon</b>	<b>(a)</b>	15.VI.1976
<b>Cape Verde</b>	<b>(a)</b>	13.I.1978
<b>Central African Republic</b>	<b>(a)</b>	13.V.1977
<b>Chile</b>	<b>(S)</b>	25.VI.1975
<b>China <sup>1</sup></b>	<b>(a)</b>	23.IX.1980
<b>Congo</b>	<b>(a)</b>	26.VII.1982
<b>Costa Rica</b>	<b>(r)</b>	27.X.1978
<b>Cuba</b>	<b>(a)</b>	23.VII.1976
<b>Czech Republic</b>	<b>(AA)</b>	4.VI.1979
<b>Denmark (except Greenland and the Faroe Islands)</b>	<b>(a)</b>	28.VI.1985
<b>Egypt</b>	<b>(a)</b>	25.I.1979
<b>Ethiopia</b>	<b>(r)</b>	1.IX.1978
<b>Finland</b>	<b>(a)</b>	31.XII.1985
<b>France</b>	<b>(AA)</b>	4.X.1985
<b>Gabon</b>	<b>(r)</b>	5.VI.1978
<b>Gambia</b>	<b>(S)</b>	30.VI.1975
<b>Germany</b>	<b>(r)</b>	6.IV.1983
<b>Ghana</b>	<b>(r)</b>	24.VI.1975
<b>Guatemala</b>	<b>(r)</b>	3.III.1976
<b>Guinea</b>	<b>(a)</b>	19.VIII.1980
<b>Guyana</b>	<b>(a)</b>	7.I.1980
<b>Honduras</b>	<b>(a)</b>	12.VI.1979
<b>India</b>	<b>(r)</b>	14.II.1978
<b>Indonesia</b>	<b>(r)</b>	11.I.1977
<b>Iraq</b>	<b>(a)</b>	25.X.1978

<sup>1</sup> Applied to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

*Code of conduct 1974**Code de conduite 1974*

<b>Italy</b>	<b>(a)</b>	30.V.1989
<b>Ivory Coast</b>	<b>(r)</b>	17.II.1977
<b>Jamaica</b>	<b>(a)</b>	20.VII.1982
<b>Jordan</b>	<b>(a)</b>	17.III.1980
<b>Kenya</b>	<b>(a)</b>	27.II.1978
<b>Korea, Republic of</b>	<b>(a)</b>	11.V.1979
<b>Kuwait</b>	<b>(a)</b>	31.III.1986
<b>Lebanon</b>	<b>(a)</b>	30.IV.1982
<b>Liberia</b>	<b>(a)</b>	16.IX.2005
<b>Madagascar</b>	<b>(a)</b>	23.XII.1977
<b>Malaysia</b>	<b>(a)</b>	27.VIII.1982
<b>Mali</b>	<b>(a)</b>	15.III.1978
<b>Mauritania</b>	<b>(a)</b>	21.III.1988
<b>Mauritius</b>	<b>(a)</b>	16.IX.1980
<b>Mexico</b>	<b>(a)</b>	6.V.1976
<b>Montenegro</b>	<b>(d)</b>	23.X.2006
<b>Morocco</b>	<b>(a)</b>	11.II.1980
<b>Mozambique</b>	<b>(a)</b>	21.IX.1990
<b>Netherlands (for the Kingdom in Europe only)</b>	<b>(a)</b>	6.IV.1983
<b>Niger</b>	<b>(r)</b>	13.I.1976
<b>Nigeria</b>	<b>(a)</b>	10.IX.1975
<b>Norway</b>	<b>(a)</b>	28.VI.1985
<b>Pakistan</b>	<b>(S)</b>	27.VI.1975
<b>Peru</b>	<b>(a)</b>	21.XI.1978
<b>Philippines</b>	<b>(r)</b>	2.III.1976
<b>Portugal</b>	<b>(a)</b>	13.VI.1990
<b>Qatar</b>	<b>(a)</b>	31.X.1994
<b>Romania</b>	<b>(a)</b>	7.I.1982
<b>Russian Federation</b>	<b>(A)</b>	28.VI.1979
<b>Saudi Arabia</b>	<b>(a)</b>	24.V.1985
<b>Senegal</b>	<b>(r)</b>	20.V.1977
<b>Serbia</b>	<b>(d)</b>	12.III.2001
<b>Sierra Leone</b>	<b>(a)</b>	9.VII.1979
<b>Slovakia</b>	<b>(AA)</b>	4.VI.1979
<b>Somalia</b>	<b>(a)</b>	14.XI.1988
<b>Spain</b>	<b>(a)</b>	3.II.1994
<b>Sri Lanka</b>	<b>(S)</b>	30.VI.1975
<b>Sudan</b>	<b>(a)</b>	16.III.1978
<b>Sweden</b>	<b>(a)</b>	28.VI.1985
<b>Togo</b>	<b>(r)</b>	12.I.1978
<b>Trinidad and Tobago</b>	<b>(a)</b>	3.III.1983
<b>Tunisia</b>	<b>(a)</b>	15.III.1979
<b>United Kingdom</b>	<b>(a)</b>	28.VI.1985
<b>United Republic of Tanzania</b>	<b>(a)</b>	3.XI.1975
<b>Uruguay</b>	<b>(a)</b>	9.VII.1979
<b>Venezuela</b>	<b>(S)</b>	30.VI.1975
<b>Zambia</b>	<b>(a)</b>	8.IV.1988

*Hamburg Rules 1978**Règles de Hambourg 1978*

**United Nations Convention  
on the  
Carriage of goods by sea**

**Hamburg, 31 March 1978**

**“HAMBURG RULES”**

Entered into force:  
1 November 1992

**Convention des Nations Unies  
sur le  
Transport de marchandises  
par mer**

**Hambourg 31 mars 1978**

**“REGLES DE HAMBOURG”**

Entrée en vigueur:  
1 novembre 1992

<b>Albania</b>	<b>(a)</b>	20.VII.2006
<b>Austria</b>	<b>(r)</b>	29.VII.1993
<b>Barbados</b>	<b>(a)</b>	2.II.1981
<b>Botswana</b>	<b>(a)</b>	16.II.1988
<b>Burkina Faso</b>	<b>(a)</b>	14.VIII.1989
<b>Burundi</b>	<b>(a)</b>	4.IX.1998
<b>Cameroon</b>	<b>(a)</b>	21.IX.1993
<b>Chile</b>	<b>(r)</b>	9.VII.1982
<b>Czech Republic <sup>1</sup></b>	<b>(r)</b>	23.VI.1995
<b>Dominican Republic</b>	<b>(a)</b>	28.IX.2007
<b>Egypt</b>	<b>(r)</b>	23.IV.1979
<b>Gambia</b>	<b>(r)</b>	7.II.1996
<b>Georgia</b>	<b>(a)</b>	21.III.1996
<b>Guinea</b>	<b>(r)</b>	23.I.1991
<b>Hungary</b>	<b>(r)</b>	5.VII.1984
<b>Jordan</b>	<b>(a)</b>	10.V.2001
<b>Kazakhstan</b>	<b>(a)</b>	18.VI.2008
<b>Kenya</b>	<b>(a)</b>	31.VII.1989
<b>Lebanon</b>	<b>(a)</b>	4.IV.1983
<b>Lesotho</b>	<b>(a)</b>	26.X.1989
<b>Liberia</b>	<b>(a)</b>	16.IX.2005
<b>Malawi</b>	<b>(r)</b>	18.III.1991
<b>Morocco</b>	<b>(a)</b>	12.VI.1981
<b>Nigeria</b>	<b>(a)</b>	7.XI.1988
<b>Paraguay</b>	<b>(a)</b>	19.VII.2005
<b>Romania</b>	<b>(a)</b>	7.I.1982
<b>Saint Vincent and the Grenadines</b>	<b>(a)</b>	12.IX.2000
<b>Senegal</b>	<b>(r)</b>	17.III.1986
<b>Sierra Leone</b>	<b>(r)</b>	7.X.1988
<b>Syrian Arab Republic</b>	<b>(a)</b>	16.X.2002
<b>Tanzania, United Republic of</b>	<b>(a)</b>	24.VII.1979
<b>Tunisia</b>	<b>(a)</b>	15.IX.1980
<b>Uganda</b>	<b>(a)</b>	6.VII.1979
<b>Zambia</b>	<b>(a)</b>	7.X.1991

<sup>1</sup> The Convention was signed on 6 March 1979 by the former Czechoslovakia. Respectively on 28 May 1993 and on 2 Jun 1993 the Slovak Republic and the Czech Republic deposited instruments of succession. The Czech Republic then deposited instrument of ratification on 23 Jun 1995.

**United Nations Convention  
on the  
International multimodal  
transport of goods**

Geneva, 24 May 1980  
Not yet in force.

**Burundi**  
**Chile**  
**Georgia**  
**Lebanon**  
**Liberia**  
**Malawi**  
**Mexico**  
**Morocco**  
**Rwanda**  
**Senegal**  
**Zambia**

**Convention des Nations Unies  
sur le  
Transport multimodal  
international de  
marchandises**

Genève 24 mai 1980  
Pas encore en vigueur.

(a) 4.IX.1998  
(r) 7.IV.1982  
(a) 21.III.1996  
(a) 1.VI.2001  
(a) 16.IX.2005  
(a) 2.II.1984  
(r) 11.II.1982  
(r) 21.I.1993  
(a) 15.IX.1987  
(r) 25.X.1984  
(a) 7.X.1991

**United Nations Convention  
on the Law of the Sea  
(UNCLOS 1982)**

Montego Bay 10 December 1982  
Entered into force:  
16 November 1994

**Convention des Nations Unies  
sur les Droit de la Mer**

Montego Bay 10 decembre 1982  
Entrée en vigueur:  
16 Novembre 1994

**Albania**  
**Algeria**  
**Angola**  
**Antigua and Barbuda**  
**Argentina**  
**Armenia**  
**Australia**  
**Austria**  
**Bahamas**  
**Bahrain**  
**Bangladesh**  
**Barbados**  
**Belarus**  
**Belgium**  
**Belize**  
**Benin**  
**Bolivia**  
**Bosnia and Herzegovina**  
**Botswana**  
**Brazil**  
**Brunei Darussalam**

23.VI.2003  
11.VI.1996  
5.XII.1990  
2.II.1989  
1.XII.1995  
9.XII.2002  
5.X.1994  
14.VII.1995  
29.VII.1983  
30.V.1985  
27.VII.2001  
12.X.1993  
30.VIII.2006  
13.XI.1998  
13.VIII.1983  
16.X.1997  
28.IV.1995  
12.I.1994  
2.V.1990  
22.XII.1988  
5.XI.1996



*UNCLOS 1982*


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<b>Bulgaria</b>	15.V.1996
<b>Burkina Faso</b>	25.I.2005
<b>Cameroon</b>	19.XI.1985
<b>Canada</b>	7.XI.2003
<b>Cape Verde</b>	10.VIII.1987
<b>Chad</b>	14.VIII.2009
<b>Chile</b>	25.VIII.1997
<b>China</b>	7.VI.1996
<b>Comoros</b>	21.VI.1994
<b>Congo</b>	9.VII.2008
<b>Congo, Democratic Republic of</b>	17.II.1989
<b>Cook Islands</b>	15.II.1995
<b>Costa Rica</b>	21.IX.1992
<b>Côte d'Ivoire</b>	28.VII.1995
<b>Croatia</b>	5.IV.1995
<b>Cuba</b>	15.VIII.1984
<b>Cyprus</b>	12.XII.1988
<b>Czech Republic</b>	21.VI.1996
<b>Denmark</b>	16.XI.2004
<b>Djibouti</b>	8.X.1991
<b>Dominica</b>	24.X.1991
<b>Ecuador</b>	24.IX.2012
<b>Egypt</b>	26.VIII.1983
<b>Equatorial Guinea</b>	21.VII.1997
<b>Estonia</b>	26.VIII.2005
<b>European Community</b>	1.IV.1998
<b>Fiji</b>	10.XII.1982
<b>Finland</b>	21.VI.1996
<b>France</b>	11.IV.1996
<b>Gabon</b>	11.III.1988
<b>Gambia</b>	22.V.1984
<b>Georgia</b>	21.III.1996
<b>Germany</b>	14.X.1994
<b>Ghana</b>	7.VI.1983
<b>Greece</b>	21.VII.1995
<b>Grenada</b>	25.IV.1991
<b>Guatemala</b>	11.II.1997
<b>Guinea</b>	6.IX.1985
<b>Guinea-Bissau</b>	25.VIII.1986
<b>Guyana</b>	16.XI.1993
<b>Haiti</b>	31.VII.1996
<b>Honduras</b>	5.X.1993
<b>Hungary</b>	5.II.2002
<b>Iceland</b>	21.VI.1985
<b>India</b>	29.VI.1995
<b>Indonesia</b>	3.II.1986
<b>Iraq</b>	30.VII.1985
<b>Ireland</b>	21.VI.1996
<b>Italy</b>	13.I.1995
<b>Jamaica</b>	21.III.1983
<b>Japan</b>	20.VI.1996

*UNCLOS 1982*


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<b>Jordan</b>	27.XI.1995
<b>Kenya</b>	2.III.1989
<b>Kiribati</b>	24.II.2003
<b>Korea, Republic of</b>	29.I.1996
<b>Kuwait</b>	2.V.1986
<b>Lao People's Democratic Republic</b>	5.VI.1998
<b>Latvia</b>	23.XII.2004
<b>Lebanon</b>	5.I.1995
<b>Lesotho</b>	31.V.2007
<b>Liberia</b>	25.IX.2008
<b>Lituania</b>	12.XI.2003
<b>Luxembourg</b>	5.X.2000
<b>Madagascar</b>	22.VIII.2001
<b>Malawi</b>	28.IX.2010
<b>Malaysia</b>	14.X.1996
<b>Maldives</b>	7.IX.2000
<b>Mali</b>	16.VII.1985
<b>Malta</b>	20.V.1993
<b>Marshall Islands</b>	9.VIII.1991
<b>Mauritania</b>	17.VII.1996
<b>Mauritius</b>	4.XI.1994
<b>Mexico</b>	18.III.1983
<b>Micronesia, Federated States of</b>	29.IV.1991
<b>Moldova, Republic of</b>	6.II.2007
<b>Monaco</b>	20.III.1996
<b>Mongolia</b>	13.VIII.1996
<b>Montenegro</b>	23.X.2006
<b>Morocco</b>	31.V.2007
<b>Mozambique</b>	13.III.1997
<b>Myanmar</b>	21.V.1996
<b>Namibia, United Nations Council for</b>	18.IV.1983
<b>Nauru</b>	23.I.1996
<b>Nepal</b>	2.XI.1998
<b>Netherlands</b>	28.VI.1996
<b>New Zeland</b>	19.VII.1996
<b>Nicaragua</b>	3.V.2000
<b>Niger</b>	7.VIII.2013
<b>Nigeria</b>	14.VIII.1986
<b>Niue</b>	11.X.2006
<b>Norway</b>	24.VI.1996
<b>Oman</b>	17.VIII.1989
<b>Pakistan</b>	26.II.1997
<b>Palau</b>	30.IX.1996
<b>Panama</b>	1.VII.1996
<b>Papua New Guinea</b>	14.I.1997
<b>Paraguay</b>	26.IX.1986
<b>Philippines</b>	8.V.1984
<b>Poland</b>	13.XI.1998
<b>Portugal</b>	3.XI.1997
<b>Qatar</b>	7.XII.2002
<b>Romania</b>	17.XII.1996

*UNCLOS 1982*


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<b>Russian Federation</b>	12.III.1997
<b>Samoa</b>	14.VIII.1995
<b>St. Kitts and Nevis</b>	7.I.1993
<b>St. Lucia</b>	27. III.1985
<b>St. Vincent and the Grenadines</b>	1.X.1993
<b>Sao Tomé and Príncipe</b>	3.XI.1987
<b>Saudi Arabia</b>	24.IV.1996
<b>Senegal</b>	25.X.1984
<b>Serbia</b>	12.III.2001
<b>Seychelles</b>	16.IX.1991
<b>Sierra Leone</b>	12.XII.1994
<b>Singapore</b>	17.XI.1994
<b>Slovakia</b>	8.V.1996
<b>Slovenia</b>	16.VI.1995
<b>Solomon Islands</b>	23.VI.1997
<b>Somalia</b>	24.VII.1989
<b>South Africa</b>	23.XII.1997
<b>Spain</b>	15.I.1997
<b>Sri Lanka</b>	19.VII.1994
<b>Sudan</b>	23.I.1985
<b>Suriname</b>	9.VII.1998
<b>Swaziland</b>	24.IX.2012
<b>Sweden</b>	25.VI.1996
<b>Switzerland</b>	1.V.2009
<b>Tanzania, United Republic of</b>	30.IX.1985
<b>Thailand</b>	15.V.2011
<b>The Former Yugoslav Republic of Macedonia</b>	19.VIII.1994
<b>Timor</b>	8.I.2013
<b>Togo</b>	16.IV.1985
<b>Tonga</b>	2.VIII.1995
<b>Trinidad and Tobago</b>	25.IV.1986
<b>Tunisia</b>	24.IV.1985
<b>Tuvalu</b>	9.XII.2002
<b>Uganda</b>	9.XI.1990
<b>Ukraine</b>	26.VII.1999
<b>United Kingdom</b>	25.VII.1997
<b>Uruguay</b>	10.XII.1992
<b>Vanautu</b>	10.VIII.1999
<b>Viet Nam</b>	25.VII.1994
<b>Yemen, Democratic Republic of</b>	21.VII.1987
<b>Zambia</b>	7.III.1983
<b>Zimbabwe</b>	24.II.1993

*Registration of ships 1986**Liability of operators 1991***United Nations Convention  
on Conditions for  
Registration of ships**

Geneva, 7 February 1986  
Not yet in force.

**Albania**  
**Bulgaria**  
**Egypt**  
**Georgia**  
**Ghana**  
**Haiti**  
**Hungary**  
**Iraq**  
**Ivory Coast**  
**Liberia**  
**Libyan Arab Jamahiriya**  
**Mexico**  
**Morocco**  
**Oman**  
**Syrian Arab Republic**

**Convention des Nations  
Unies sur les Conditions d'  
Immatriculation des navires**

Genève, 7 février 1986  
Pas encore entrée en vigueur.

(a) 4.X.2004  
(a) 27.XII.1996  
(r) 9.I.1992  
(a) 7.VIII.1995  
(a) 29.VIII.1990  
(a) 17.V.1989  
(a) 23.I.1989  
(a) 1.II.1989  
(r) 28.X.1987  
(a) 16.IX.2005  
(r) 28.II.1989  
(r) 21.I.1988  
(a) 19.IX.2012  
(a) 18.X.1990  
(a) 29.IX.2004

**United Nations Convention on  
the Liability of operators of  
transport terminals in  
the international trade**

Done at Vienna 19 April 1991  
Not yet in force.

**Gabon**  
**Georgia**  
**Egypt**  
**Paraguay**

**Convention des Nations Unies sur  
la Responsabilité des  
exploitants de terminaux  
transport dans le commerce  
international**

Signée à Vienne 19 avril 1991  
Pas encore entrée en vigueur.

(a) 15.XII.2004  
(a) 21.III.1996  
(a) 6.IV.1999  
(a) 19.VII.2005

**International Convention on  
Maritime liens and  
mortgages, 1993**

Done at Geneva, 6 May 1993  
Entered into force:  
5 September 2004

**Albania**  
**Benin**  
**Congo**

**Convention Internationale de  
1993 su les Privilèges  
et hypothèques maritimes**

Signée à Genève, le 6 mai 1993  
Entrée en vigueur:  
5 septembre 2004

(a) 9.VIII.2010  
(a) 3.III.2010  
(a) 11.VI.2014

*Maritime liens and mortgages, 1993*

<b>Ecuador</b>	<b>(a)</b>	16.III.2004
<b>Estonia</b>	<b>(a)</b>	7.II.2003
<b>Lithuania</b>	<b>(a)</b>	8.II.2008
<b>Monaco</b>	<b>(a)</b>	28.III.1995
<b>Nigeria</b>	<b>(a)</b>	5.III.2004
<b>Peru</b>	<b>(a)</b>	23.III.2007
<b>Russian Federation</b>	<b>(a)</b>	4.III.1999
<b>Saint Kitts and Nevis</b>	<b>(a)</b>	15.VI.2010
<b>Saint Vincent and the Grenadines</b>	<b>(a)</b>	11.III.1997
<b>Serbia</b>	<b>(a)</b>	23.XII.2011
<b>Spain</b>	<b>(a)</b>	7.VI.2002
<b>Syrian Arab Republic</b>	<b>(a)</b>	8.X.2003
<b>Tunisia</b>	<b>(r)</b>	2.II.1995
<b>Ukraine</b>	<b>(a)</b>	27.II.2003
<b>Vanuatu</b>	<b>(a)</b>	10.VIII.1999

**International Convention on  
Arrest of Ships, 1999**

Will enter into force on  
14 September 2011

**Convention Internationale de  
1999 sur la saisie  
conservatoire des navires**

Entrera en vigueur  
le 14 Septembre 2011

<b>Albania</b>	<b>(a)</b>	14.III.2011
<b>Algeria</b>	<b>(a)</b>	7.V.2004
<b>Congo</b>	<b>(a)</b>	11.VI.2014
<b>Benin</b>	<b>(a)</b>	3.III.2010
<b>Bulgaria</b>	<b>(r)</b>	21.II.2001
<b>Ecuador</b>	<b>(r)</b>	15.X.2010
<b>Estonia</b>	<b>(a)</b>	11.V.2001
<b>Latvia</b>	<b>(a)</b>	7.XII.2001
<b>Liberia</b>	<b>(a)</b>	16.IX.2005
<b>Spain</b> <sup>1</sup>	<b>(a)</b>	7.VI.2002
<b>Syrian Arab Republic</b> <sup>2</sup>	<b>(a)</b>	16.X.2002

<sup>1</sup> At the time of its accession, the Kingdom of Spain, in accordance with article 10, paragraph 1 (b), reserves the right to exclude the application of this Convention in the case of ships not flying the flag of a State party.

<sup>2</sup> The accession of the Syrian Arab Republic to this Convention shall not in any way be construed to mean recognition of Israel and shall not lead to entry with it into any of the transactions regulated by the provisions of the Convention.

## STATUS OF THE RATIFICATIONS TO UNESCO CONVENTIONS

### UNESCO Convention on the Protection of the Underwater Cultural Heritage

Done at Paris 2 November 2001\*

	Date of deposit of instrument
<b>Albania (ratification)</b>	19.III.2009
<b>Algeria (ratification)</b>	26.II.2015
<b>Antigua and Barbuda (ratification)</b>	25.IV.2013
<b>Argentina (ratification)</b>	12.VII.2010
<b>Bahrain (ratification)</b>	7.III.2014
<b>Barbados (acceptance)</b>	2.X.2008
<b>Belgium (ratification)</b>	5.VIII.2013
<b>Benin (ratification)</b>	4.VIII.2011
<b>Bosnia and Herzegovina (ratification)</b>	22.IV.2009
<b>Bulgaria (ratification)</b>	06.X.2003
<b>Cambodia (ratification)</b>	24.XI.2007
<b>Congo, Democratic Republic of (ratification)</b>	28.IX.2010
<b>Croatia (ratification)</b>	1.XII.2004
<b>Cuba (ratification)</b>	26.V.2008
<b>Ecuador (ratification)</b>	1.XII.2006
<b>France (ratification)</b>	7.II.2013
<b>Gabon (acceptance)</b>	1.II.2010
<b>Ghana (ratification)</b>	20.I.2016
<b>Grenada (ratification)</b>	15.I.2009
<b>Guatemala (ratification)</b>	3.XI.2015
<b>Guinea-Bissau (acceptance)</b>	7.III.2016
<b>Haiti (ratification)</b>	9.XI.2009
<b>Honduras (ratification)</b>	23.VII.2010
<b>Hungary (ratification)</b>	19.III.2014
<b>Iran (Islamic Republic of) (ratification)</b>	16.VI.2009
<b>Italy (ratification)</b>	8.I.2010
<b>Jamaica (ratification)</b>	9.VIII.2011
<b>Jordan (ratification)</b>	2.XII.2009
<b>Lebanon (acceptance)</b>	08.I.2007
<b>Libyan Arab Jamahiriya (ratification)</b>	23.VI.2005
<b>Lithuania (ratification)</b>	12.VI.2006
<b>Mexico (ratification)</b>	5.VIII.2006
<b>Madagascar (ratification)</b>	19.I.2015
<b>Montenegro (ratification)</b>	18.VII.2008
<b>Morocco (ratification)</b>	20.VI.2011
<b>Namibia (ratification)</b>	9.III.2011

*Protection of the Underwater Cultural Heritage 2001*

	<b>Date of deposit of instrument</b>
<b>Nigeria (ratification)</b>	21.X.2005
<b>Palestine (ratification)</b>	8.XII.2011
<b>Panama (ratification)</b>	20.V.2003
<b>Paraguay (ratification)</b>	7.IX.2006
<b>Portugal (ratification)</b>	21.IX.2006
<b>Romania (acceptance)</b>	31.VII.2007
<b>Saint Kitts and Nevis (ratification)</b>	3.XII.2009
<b>Saint Lucia (ratification)</b>	1.II.2007
<b>Saint Vincent and the Grenadines (ratification)</b>	8.XI.2010
<b>Saudi Arabia (ratification)</b>	13.XI.2015
<b>Slovakia (ratification)</b>	11.III.2009
<b>Slovenia (ratification)</b>	18.IX.2008
<b>South Africa (acceptance)</b>	12.V.2015
<b>Spain (ratification)</b>	6.VI.2005
<b>Togo (ratification)</b>	7.VI.2013
<b>Trinidad and Tobago (ratification)</b>	27.VII.2010
<b>Tunisia (ratification)</b>	15.I.2009
<b>Ukraine (ratification)</b>	27.XII.2006

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\* In accordance with its Article 27, this Convention shall enter into force on 2 January 2009 for those States that have deposited their respective instruments of ratification, acceptance, approval or accession on or before 2 October 2008. It shall enter into force for any other State three months after the deposit by that State of its instrument of ratification, acceptance, approval or accession.

**STATUS OF THE RATIFICATIONS OF  
AND ACCESSIONS TO UNIDROIT CONVENTIONS  
IN THE FIELD OF PRIVATE MARITIME LAW**

**ETAT DES RATIFICATIONS ET ADHESIONS  
AUX CONVENTIONS D'UNIDROIT EN MATIERE  
DE DROIT MARITIME PRIVE**

**Unidroit Convention on  
International financial  
leasing 1988**

Done at Ottawa 28 May 1988  
Entered into force.  
1 May 1995

**Convention de Unidroit sur  
le Creditbail international  
1988**

Signée à Ottawa 28 mai 1988  
Entré en vigueur:  
1 Mai 1995

<b>Belarus</b>	<b>(a)</b>	18.VIII.1998
<b>France</b>	<b>(r)</b>	23.IX.1991
<b>Hungary</b>	<b>(a)</b>	7.V.1996
<b>Italy</b>	<b>(r)</b>	29.XI.1993
<b>Latvia</b>	<b>(a)</b>	6.VIII.1997
<b>Nigeria</b>	<b>(r)</b>	25.X.1994
<b>Panama</b>	<b>(r)</b>	26.III.1997
<b>Russian Federation</b>	<b>(a)</b>	3.VI.1998
<b>Ukraine</b>	<b>(a)</b>	5.XII.2006
<b>Uzbekistan, Republic of</b>	<b>(a)</b>	6.VII.2000



## CONFERENCES OF THE COMITE MARITIME INTERNATIONAL

### I. BRUSSELS - 1897

*President:* Mr. Auguste BEERNAERT.

*Subjects:*

Organization of the International  
Maritime Committee - Collision -  
Shipowners' Liability.

### II. ANTWERP - 1898

*President:* Mr. Auguste BEERNAERT.

*Subjects:*

Liability of Owners of sea-going vessels.

### III. LONDON - 1899

*President:* Sir Walter PHILLIMORE.

*Subjects:*

Collisions in which both ships are to  
blame - Shipowners' liability.

### IV. PARIS - 1900

*President:* Mr. LYON-CAEN.

*Subjects:*

Assistance, salvage and duty to tender  
assistance - Jurisdiction in collision  
matters.

### V. HAMBURG - 1902

*President:* Dr. Friedrich SIEVEKING.

*Subjects:*

International Code on Collision and  
Salvage at Sea - Jurisdiction in collision  
matters - Conflict of laws as to  
owner-ship of vessels.

### VI. AMSTERDAM - 1904

*President:* Mr. E.N. RAHUSEN.

*Subjects:*

Conflicts of law in the matter of  
Mortgages and Liens on ships. -  
Jurisdiction in collision matters -  
Limitation of Shipowners' Liability.

### VII. LIVERPOOL - 1905

*President:* Sir William R. KENNEDY.

*Subjects:*

Limitation of Shipowners' Liability -  
Conflict of Laws as to Maritime  
Mortgages and Liens - Brussels  
Diplomatic Conference.

### VIII. VENICE - 1907

*President:* Mr. Alberto MARGHERI.

*Subjects:*

Limitation of Shipowners' Liability -  
Maritime Mortgages and Liens -  
Conflict of law as to Freight.

### IX. BREMEN - 1909

*President:* Dr. Friedrich SIEVEKING.

*Subjects:*

Conflict of laws as to Freight -  
Compensation in respect of personal  
injuries - Publication of Maritime  
Mortgages and Liens.

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*Conferences of the Comité Maritime International*


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## X. PARIS - 1911

*President:* Mr. Paul GOVARE.*Subjects:*

Limitation of Shipowners' Liability in the event of loss of life or personal injury - Freight.

## XI. COPENHAGEN - 1913

*President:* Dr. J.H. KOCH.*Subjects:*

London declaration 1909 - Safety of Navigation - International Code of Affreightment - Insurance of enemy property.

## XII. ANTWERP - 1921

*President:* Mr. Louis FRANCK.*Subjects:*

International Conventions relating to Collision and Salvage at sea. - Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Code of Affreightment - Exonerating clauses.

## XIII LONDON - 1922

*President:* Sir Henry DUKE.*Subjects:*

Immunity of State-owned ships - Maritime Mortgage and Liens. - Exonerating clauses in Bills of lading.

## XIV. GOTHENBURG - 1923

*President:* Mr. Efiel LÖFGREN.*Subjects:*

Compulsory insurance of passengers - Immunity of State owned ships - International Code of Affreightment - International Convention on Bills of Lading.

## XV. GENOA - 1925

*President:* Dr. Francesco BERLINGIERI.*Subjects:* Compulsory Insurance of

passengers - Immunity of State owned ships - International Code of Affreightment - Maritime Mortgages and Liens.

## XVI. AMSTERDAM - 1927

*President:* Mr. B.C.J. LODER.*Subjects:*

Compulsory insurance of passengers - Letters of indemnity - Ratification of the Brussels Conventions.

## XVII. ANTWERP - 1930

*President:* Mr. Louis FRANCK.*Subjects:*

Ratification of the Brussels Conventions - Compulsory insurance of passengers - Jurisdiction and penal sanctions in matters of collision at sea.

## XVIII. OSLO - 1933

*President:* Mr. Edvin ALTEN.*Subjects:*

Ratification of the Brussels Conventions - Civil and penal jurisdiction in matters of collision on the high seas - Provisional arrest of ships - Limitation of Shipowners' Liability.

## XIX. PARIS - 1937

*President:* Mr. Georges RIPERT.*Subjects:*

Ratification of the Brussels Conventions - Civil and penal jurisdiction in the event of collision at sea - Arrest of ships - Commentary on the Brussels Conventions - Assistance and Salvage of and by Aircraft at sea.

## XX. ANTWERP - 1947

*President:* Mr. Albert LILAR.*Subjects:*

Ratification of the Brussels Conventions, more especially of the Convention on

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*Conferences of the Comité Maritime International*


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Immunity of State-owned ships -  
Revision of the Convention on Limitation  
of the Liability of Owners of sea-going  
vessels and of the Convention on Bills of  
Lading - Examination of the three draft  
conventions adopted at the Paris  
Conference 1937 - Assistance and  
Salvage of and by Aircraft at sea -  
York and Antwerp Rules; rate of interest.

## XXI. AMSTERDAM - 1948

*President:* Prof. J. OFFERHAUS

*Subjects:*

Ratification of the Brussels International  
Convention - Revision of the  
York-Antwerp Rules 1924 - Limitation of  
Shipowners' Liability (Gold Clauses) -  
Combined Through Bills of Lading -  
Revision of the draft Convention on arrest  
of ships - Draft of creation of an  
International Court for Navigation by Sea  
and by Air.

## XXII. NAPLES - 1951

*President:* Mr. Amedeo GIANNINI.

*Subjects:*

Brussels International Conventions -  
Draft convention relating to Provisional  
Arrest of Ships - Limitation of the  
liability of the Owners of Sea-going  
Vessels and Bills of Lading (Revision  
of the Gold clauses) - Revision of the  
Conventions of Maritime Hypothèques  
and Mortgages - Liability of Carriers  
by Sea towards Passengers - Penal  
Jurisdiction in matters of collision  
at Sea.

## XXIII. MADRID - 1955

*President:* Mr. Albert LILAR.

*Subjects:*

Limitation of Shipowners' Liability -  
Liability of Sea Carriers towards  
passengers - Stowaways - Marginal  
clauses and letters of indemnity.

## XXIV. RIJEKA - 1959

*President:* Mr. Albert LILAR

*Subjects:*

Liability of operators of nuclear ships -  
Revision of Article X of the International  
Convention for the Unification of  
certain Rules of law relating to Bills of  
Lading - Letters of Indemnity and  
Marginal clauses. Revision of Article  
XIV of the International Convention for  
the Unification of certain rules of Law  
relating to assistance and salvage at sea -  
International Statute of Ships in Foreign  
ports - Registry of operations of ships.

## XXV. ATHENS - 1962

*President:* Mr. Albert LILAR

*Subjects:*

Damages in Matters of Collision -  
Letters of Indemnity - International  
Statute of Ships in Foreign Ports -  
Registry of Ships -  
Coordination of the Convention of  
Limitation and on Mortgages -  
Demurrage and Despatch Money -  
Liability of Carriers of  
Luggage.

## XXVI. STOCKHOLM - 1963

*President:* Mr. Albert LILAR

*Subjects:*

Bills of Lading - Passenger Luggage -  
Ships under construction.

## XXVII. NEW YORK - 1965

*President:* Mr. Albert LILAR

*Subjects:*

Revision of the Convention on Maritime  
Liens and Mortgages.

## XXVIII. TOKYO - 1969

*President:* Mr. Albert LILAR

*Subjects:*

"Torrey Canyon" - Combined Transports -  
Coordination of International Convention

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relating to Carriage by Sea of Passengers and their Luggage.

XXIX. ANTWERP - 1972

*President:* Mr. Albert LILAR

*Subjects:*

Revision of the Constitution of the International Maritime Committee.

XXX. HAMBURG - 1974

*President:* Mr. Albert LILAR

*Subjects:*

Revisions of the York/Antwerp Rules 1950 - Limitation of the Liability of the Owners of Seagoing vessels - The Hague Rules.

XXXI. RIO DE JANEIRO - 1977

*President:* Prof. Francesco BERLINGIERI

*Subjects:*

Draft Convention on Jurisdiction, Choice of law and Recognition and enforcement of Judgements in Collision matters. Draft Convention on Off-Shore Mobile Craft.

XXXII MONTREAL - 1981

*President:* Prof. Francesco BERLINGIERI

*Subjects:*

Convention for the unification of certain rules of law relating to assistance and salvage at sea - Carriage of hazardous and noxious substances by sea.

XXXIII. LISBON- 1985

*President:* Prof. Francesco BERLINGIERI

*Subjects:*

Convention on Maritime Liens and Mortgages - Convention on Arrest of Ships.

XXXIV. PARIS - 1990

*President:* Prof. Francesco BERLINGIERI

*Subjects:*

Uniformity of the Law of Carriage of

Goods by Sea in the 1990's - CMI Uniform Rules for Sea Waybills - CMI Rules for Electronic Bills of Lading - Revision of Rule VI of the York-Antwerp Rules 1974.

XXXV. SYDNEY - 1994

*President:* Prof. Allan PHILIP

*Subjects:*

Review of the Law of General Average and York-Antwerp Rules 1974 (as amended 1990) - Draft Convention on Off-Shore Mobile Craft - Assessment of Claims for Pollution Damage - *Special Sessions:* Third Party Liability - Classification Societies - Marine Insurance: Is the doctrine of Utmost Good Faith out of date?

XXXVI. ANTWERP – 1997

CENTENARY CONFERENCE

*President:* Prof. Allan PHILIP

*Subjects:*

Off-Shore Mobile Craft - Towards a Maritime Liability Convention - EDI - Collision and Salvage - Wreck Removal Convention - Maritime Liens and Mortgages, Arrest of Ships - Classification Societies - Carriage of Goods by Sea - The Future of CMI.

XXXVII. SINGAPORE – 2001

*President:* Patrick GRIGGS

*Subjects:*

Issues of Transport Law - Issues of Marine Insurance - General Average - Implementation of Conventions - Piracy - Passengers Carried by Sea.

XXXVIII. VANCOUVER – 2004

*President:* Patrick GRIGGS

*Subjects:*

Transport Law - General Average - Places of Refuge for Ships in Distress - Pollution of the Marine Environment - Maritime Security - Marine Insurance - Bareboat

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Chartered Vessels - Implementation of the Salvage Convention.

XXXIX – ATHENS 2008

*President:* Jean-Serge Rohart

*Subjects:*

Places of Refuge – Procedural Rules Relating to Limitation of Liability in Maritime Law – UNCITRAL Draft Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea – Non-technical Measures to Promote Quality Shipping – Implementation and Interpretation of International Conventions – Judicial Sale of Ships – Charterer's Right to Limit Liability – Charterer's Right to Limit Liability – Wreck Removal Convention 2007 – Draft Convention on Recycling of Ships

XL – BEIJING 2012

*President:* Karl-Johan Gombrii

*Subjects:*

Judicial Sales of Ships – Salvage Convention 1989 – Rotterdam Rules – York Antwerp Rules 2004 – Offshore Activity – Fair Treatment of Seafarers – Piracy – Maritime Issues for Judges – Marine Insurance – The Western and Eastern Cultural Influences on Maritime Arbitration and its Recent Developments in Asia – Arctic/Antarctic Issues – Cross Border Insolvencies – The Shipbuilding Industry in Asia: Problems

and Challenges – Future of the CMI in the Decades to come. – Young Members Session: Arrest of Ships and Judicial Sales of Vessels – Offshore Activities, New Regulations and Contracts – Enforcement on Shipping Companies by Creditors.

XLI – HAMBURG 2014

*President:* Stuart Hetherington

*Subjects:*

Judicial Sales of Ships – York Antwerp Rules 2004 – Ships in hot water: Ship Financing and Restructuring; Cross Border Insolvencies; Liability of classification societies; Wrongful arrest of ships; Piracy – Ships in cold water: Arctic Issues – Maritime Miscellany: Ships Emissions; Wreck Removal Convention; Young CMI Panel; MLC 2006 Issues and Implementation.

XLII – NEW YORK 2016

*President:* Stuart Hetherington

*Subjects:*

General Average – Costa Concordia – Cybercrime in Shipping – Offshore Activities – Pandemic Response – Polar Shipping – Unmanned Ships – Lex Maritima – Ship financing and Security Practices – Refugee Migration at sea – Cross-border insolvencies – Maritime Arbitration – Marine Insurance – Liability for Wrongful Arrest



Published by CMI Headquarter  
Dijckkaai 8, 2000 ANTWERPEN, Belgium

TYPE&EDITING (GENOA / ITALY) – MAY 2017

