

COMITE MARITIME INTERNATIONAL

**YEARBOOK
1994
ANNUAIRE**

**SYDNEY II
Documents of the Conference**

PART I

**Organization of
the CMI**

Comité Maritime International

CONSTITUTION

(1992)

PART I - GENERAL

Article 1

Object

The Comité Maritime International is a non-governmental international organization, 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 cooperate with other international organizations.

Article 2

Domicile

The domicile of the Comité Maritime International is established in Belgium.

Article 3

Membership

- a) The Comité Maritime International shall consist of national (or multinational) Associations of Maritime Law, the objects of which conform to that of the Comité Maritime International and the membership of which is open to persons (individuals or bodies corporate) who either are involved in maritime activities or are specialists in maritime law. Member Associations should 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

Comité Maritime International

STATUTS

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IÈRE PARTIE - DISPOSITIONS GÉNÉRALES

Article 1er

Objet

Le Comité Maritime International est une organisation nongouvernementale internationale qui a pour objet 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

Siège

Le siège du Comité Maritime International est fixé en Belgique.

Article 3

Membres

a) Le Comité Maritime International se compose d'Associations nationales (ou multinationales) de droit maritime, dont les objectifs sont conformes à ceux du Comité Maritime International et dont la qualité de membre est accordée à toutes personnes (personnes physiques ou personnes morales) qui, ou bien participent aux activités maritimes, ou bien sont des spécialistes du droit maritime. Chaque Association membre s'efforcera de maintenir l'équilibre entre les divers intérêts représentés 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

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membership only if there is no Member Association in any of its constituent States.

- b) Individual members of Member Associations may be appointed by the Assembly as Titulary Members of the Comité Maritime International upon the proposal of the Association concerned, to the maximum of twenty-one per Member Association. The appointment shall be of an honorary nature and shall be decided having regard to the services rendered by the candidates to the Comité Maritime International and to their reputation in legal or maritime affairs. Titulary Members shall not be entitled to vote.

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

- c) 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 be admitted as Provisional Members but shall not be entitled to vote. Individuals who have been Provisional Members for not less than five years may be appointed by the Assembly as Titulary Members, to the maximum number of three such Titulary Members from any one State.

- d) The Assembly may appoint to Membership *Honoris Causa* any individual who has rendered exceptional service to the Comité Maritime International, with all of the rights and privileges of a Titulary Member but without payment of contributions.

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.

- e) International organizations which are interested in the object of the Comité Maritime International may be admitted as Consultative Members but shall not be entitled to vote.

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 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

The Assembly shall meet annually on a date and at a place decided by the

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association multinationale n'est éligible en qualité de membre que si aucun des Etats qui la composent ne possède d'Association membre.

- b) Des membres individuels d'Associations membres visées dans la première partie de cet article peuvent être nommés membres titulaires du Comité Maritime International par l'Assemblée sur proposition de l'Association membre intéressée, à raison de vingt et un au maximum par Association membre. Cette nomination aura un caractère honorifique et sera décidée en tenant compte des services rendus au Comité Maritime International par les candidats et de la notoriété qu'ils auront acquise dans le domaine du droit ou des affaires maritimes.

Les membres titulaires n'auront pas le droit de vote.

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.

- c) Les nationaux des pays où il n'existe pas une Association membre mais qui ont fait preuve d'intérêt pour les objectifs du Comité Maritime International peuvent être admis comme membres provisoires, mais n'auront pas le droit de vote. Les personnes physiques qui sont membres provisoires depuis cinq ans au moins peuvent être nommées membres titulaires par l'Assemblée, à concurrence d'un maximum de trois par pays.
- d) L'Assemblée peut nommer membre d'honneur, 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.
- Les membres d'honneur 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.
- e) Les organisations internationales qui s'intéressent aux objectifs du Comité Maritime International peuvent être admises en qualité de membres consultatifs, mais n'auront pas le droit de vote.

2ème 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

L'Assemblée se réunit chaque année à la date et au lieu fixés par le Conseil

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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.

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.

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.

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 shall require the affirmative vote of a two-thirds majority of all Member Associations present, entitled to vote, and voting.

Article 7**Functions**

The functions of the Assembly are:

- a) To elect the Officers of the Comité Maritime International;
- b) To admit new members and to appoint, suspend or expel members;
- c) To fix the rates of member contributions to the Comité Maritime International;
- d) To consider and, if thought fit, approve the accounts and the budget;
- e) To consider reports of the Executive Council and to take decisions on the future activity of the Comité Maritime International;
- f) To approve the convening and decide the agenda of, and ultimately approve resolutions adopted by, International Conferences;
- g) To amend this Constitution;
- h) To adopt rules of procedure not inconsistent with the provisions of 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,

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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.

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.

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.

Article 7**Fonctions**

Les fonctions de l'Assemblée consistent à:

- a) Elire les membres du Bureau du Comité Maritime International;
- b) Admettre de nouveaux membres et nommer, suspendre ou exclure des membres;
- c) Fixer les montants des cotisations des membres du Comité Maritime International;
- d) Examiner et, le cas échéant, approuver les comptes et le budget;
- e) Etudier les rapports du Conseil Exécutif et prendre des décisions concernant les activités futures du Comité Maritime International;
- f) 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;
- g) Modifier les présents statuts;
- h) Adopter des règles de procédure sous réserve qu'elles soient conformes aux présents statuts.

3ème 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,

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- d) The Treasurer,
- e) The Administrator (if an individual), and
- f) The Executive Councillors.

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 SubCommittees and Working Groups, and represent the Comité Maritime International externally.

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 full term of four 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 full term of four years, and shall be eligible for reelection 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 and the President.

The Secretary-General shall be elected for a term of four years, and shall be eligible for reelection without limitation.

Article 12
Treasurer

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

The Treasurer shall keep the financial accounts, and prepare the balance sheet

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- d) le Trésorier,
- e) l'Administrateur (s'il est une personne physique) et
- f) les Conseillers Exécutifs.

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.

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

Le Président est élu pour un mandat entier de quatre ans et 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 dont d'autres missions leur sont confiées 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 entier de quatre 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 de poursuivre la liaison 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 quatre ans, renouvelable sans limitation de durée.

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 établit les comptes financiers, prépare le bilan de l'année civile écoulée ainsi que les budgets de l'année en cours et de l'année suivante, et sou-

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for the preceding calendar year and the budgets for the current and next succeeding year, and shall present these not later than the 31st of January each year for review by the Executive Council and approval by the Assembly.

The Treasurer shall be elected for a term of four years, and shall be eligible for re-election without limitation.

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 carry into effect the administrative decisions of the Assembly and of the Executive Council, and administrative determinations made by the President;
- e) To circulate such reports and/or documents as may be requested by the President, the Secretary General, the Treasurer or the Executive Council;
- f) 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 corporate. 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 four years, and shall be eligible for re-election without limitation. If a body corporate, 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 characterized by the Member Associations.

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

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,

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met ceux-ci, au plus tard le 31 janvier de chaque année, à l'examen du Conseil Exécutif et à l'approbation de l'Assemblée.

Le Trésorier est élu pour un mandat de quatre ans, renouvelable sans limitation de durée.

Article 13**L'Administrateur**

Les fonctions de l'Administrateur consistent à:

- a) envoyer les convocations pour toutes les réunions de l'Assemblée et du Conseil Exécutif, des conférences internationales, séminaires et colloques, ainsi que pour 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) mettre à exécution les décisions de nature administrative prises par l'Assemblée et le Conseil Exécutif, et les instructions d'ordre administratif données par le Président,
- e) assurer les distributions de rapports et documents demandées par le Président, le Secrétaire Général, le Trésorier ou le Conseil Exécutif,
- f) 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.

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 quatre ans, et est rééligible sans limite. 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, en ayant également égard 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 entier de quatre ans, renouvelable une fois.

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;

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- 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 first determine whether any officers eligible for re-election are available to serve for an additional term. He shall then solicit the views of the Member Associations concerning 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 one-hundred twenty days before the annual meeting of the Assembly at which nominees are to be elected.

Member Associations may make nominations independently of the Nominating Committee, provided such nominations are forwarded to the Administrator 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 with voice but without vote, and at his discretion shall advise the President and the Executive Council.

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:

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- b) le Président et les anciens Présidents du C.M.I.;
- 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.

Agissant au nom du Comité de Présentation, son Président détermine tout d'abord s'il y a des membres du bureau qui, étant rééligibles, sont disponibles pour accomplir un nouveau mandat. Il demande ensuite l'avis des Associations membres au sujet des candidats à présenter. Tenant compte de ces avis, le Comité de Présentation fait alors des propositions.

Le président du Comité de Présentation transmet les propositions décidées par celui-ci à l'Administrateur suffisamment à temps pour être diffusées cent-vingt jours au moins avant l'Assemblée annuelle appelée à élire des candidats proposés.

Des Associations membres peuvent, indépendamment du Comité de Présentation, faire des propositions, pourvu que celles-ci soient transmises à l'Administrateur avant l'Assemblée annuelle appelée à élire des candidats présentés.

Article 16

Le Président sortant

Le Président sortant du Comité Maritime International a la faculté d'assister à toutes les réunions du Conseil Exécutif avec voix consultative mais non délibérative, et peut, s'il le désire, conseiller le Président et le Conseil Exécutif.

4ème PARTIE - CONSEIL EXECUTIF

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 "CMI Charitable Trust", et
 - (iii) les organisations internationales;
- b) d'examiner les documents et études destinés:
 - (i) à l'Assemblée,

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- (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, and to supervise them;
 - d) To encourage and facilitate the recruitment of new members of the Comité Maritime International;
 - e) To oversee the finances of the Comité Maritime International;
 - f) To make interim appointments, if necessary, to the offices of Treasurer and Administrator;
 - g) To review and approve proposals for publications of the Comité Maritime International;
 - h) 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;
 - i) 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;
 - j) To carry into effect the decisions of the Assembly;
 - k) To report to the Assembly on the work done and on the initiatives adopted.
- The Executive Council may establish and delegate to its own Committees and Working Groups 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

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.

The Executive Council may, however, take decisions when circumstances so require without a meeting having been convened, provided that all its members are consulted and a majority respond affirmatively in writing.

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 taking decisions upon subjects on an agenda likewise approved by the Assembly.

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- (ii) aux Associations membres, concernant le travail du Comité Maritime International, et en les avisant de tout développement utile,
- (iii) aux organisations internationales, pour les informer des vues 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 et de contrôler leur activité;
- d) d'encourager et de favoriser le recrutement de nouveaux membres du Comité Maritime International;
- e) de contrôler les finances du Comité Maritime International;
- f) en cas de besoin, de pourvoir à titre provisoire à une vacance de la fonction de Trésorier ou d'Administrateur;
- g) d'examiner et d'approuver les propositions de publications du Comité Maritime International;
- h) 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;
- i) 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;
- j) d'exécuter les décisions de l'Assemblée;
- k) 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

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.

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 consultés et qu'une majorité ait répondu affirmativement par écrit.

5ème PARTIE - CONFERENCES 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 de se prononcer sur des sujets figurant à un ordre du jour également approuvé par l'Assemblée.

Organization of the CMI

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 members or Officers of the Comité Maritime International shall have the right to vote.

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

Article 21

Arrears of Contributions

Member Associations remaining in arrears of payment of contributions for more than one year from the date of the Treasurer's invoice shall be in default and shall not be entitled to vote until such default is cured.

Members liable to pay contributions who remain in arrears of payment for more than three years from the date of the Treasurer's invoice shall, unless the Executive Council decides otherwise, receive no publications or other rights and benefits of membership until such default is cured.

Contributions received from a Member in default shall be applied to reduce arrears in chronological order, beginning with the earliest year of default.

Article 22

Financial Matters

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

Members of the Executive Council and Chairmen of Standing Committees, International SubCommittees 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 authorize the reimbursement of other expenses incurred on behalf of the Comité Maritime International.

PART VII - TRANSITIONAL PROVISIONS

Article 23

Entry into Force

This Constitution shall enter into force on the first day of January, a.d. 1993.

Constitution

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.

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 des membres du Bureau du Comité Maritime International.

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.

6ème PARTIE - FINANCES

Article 21

Retards dans le paiement de Cotisations

Les Associations membres qui demeurent en retard de paiement de leurs cotisations pendant plus d'un an depuis la date de la facture du Trésorier sont considérés en défaut et ne jouissent pas du droit de vote jusqu'à ce qu'il ait été remédié au défaut de paiement.

Les membres redevables de cotisations qui demeurent en retard de paiement pendant plus de trois ans depuis la date de la facture du Trésorier 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.

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

Article 22

Questions financières

L'Administrateur reçoit une indemnisation fixée par le Conseil Exécutif.

Les membres du Conseil Exécutif et les présidents des comités permanents, des commissions internationales et des groupes de travail ont droit au remboursement des frais des 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.

7ème PARTIE - DISPOSITIONS TRANSITOIRES

Article 23

Entrée en vigueur

Les présents statuts entreront en vigueur le 1er janvier 1993.

Organization of the CMI

Article 24
Election of Officers

Notwithstanding any of the foregoing provisions of this Constitution, no election of officers shall be held until the terms of office current at the time of entry into force of this Constitution have expired; at which time the following provisions shall govern until, in accordance with Article 25, this Part VII lapses.

- a) Following adoption of this Constitution by the Assembly, the Nominating Committee shall be constituted as provided in Article 15.
- b) For purposes of determining eligibility for office, all persons holding office at the time of entry into force of this Constitution shall at the expiration of their current terms be deemed to have served in their respective offices for one term.
- c) The President, Secretary-General, Treasurer and Administrator shall be elected as provided in Articles 9, 11, 12 and 13.
- d) One Vice-President shall be elected as provided in Article 10 above, and one Vice-President shall be elected for a term of two years. When the two year term expires, the election of Vice-Presidents shall become wholly governed by Article 10.
- e) Two Executive Councillors shall be elected as provided in Article 14; two Executive Councillors shall be elected for terms of three years, two shall be elected for terms of two years, and two shall be elected for terms of one year. When the one year terms expire, two Executive Councillors shall be elected as provided in Article 14. When the two year terms expire, two Executive Councillors shall be elected as provided in Article 14. When the three year terms expire, the election of Executive Councillors shall become wholly governed by Article 14.

Article 25
Lapse of Part VII

When the election of all Executive Councillors becomes wholly governed by Article 14 of this Constitution, then this Part VII shall lapse and shall be deleted from any future printing of this Constitution.

Constitution

Article 24**Elections des membres du Bureau**

Nonobstant toute disposition précédente des présents statuts, il n'y aura pas d'élection de membres du Bureau avant l'expiration des mandats dans les fonctions en cours au moment de l'entrée en vigueur des présents statuts; à ce moment, les dispositions suivantes s'appliqueront jusqu'à ce que, conformément à l'article 25, la présente 7ème Partie devienne caduque.

- a) Après adoption des présents statuts par l'Assemblée, le Comité de Présentation de candidatures sera constitué conformément à l'Article 15.
- b) Pour la détermination des conditions d'éligibilité, toute personne titulaire d'une fonction au moment de l'entrée en vigueur des présents statuts sera, à l'expiration de son mandat en cours, réputée avoir accompli un mandat dans cette fonction.
- c) Le Président, le Secrétaire Général, le Trésorier et l'Administrateur seront élus conformément aux Articles 9, 11, 12 et 13.
- d) Un Vice-Président sera élu conformément à l'Article 10 ci-dessus, et un Vice-Président sera élu pour un mandat de deux ans. A l'expiration de ce mandat de deux ans, l'élection des Vice-Présidents deviendra entièrement conforme à l'Article 10.
- e) Deux Conseillers Exécutifs seront élus conformément à l'Article 14; deux Conseillers Exécutifs seront élus pour un mandat de trois ans, deux seront élus pour un mandat de deux ans, et deux seront élus pour un mandat d'un an. A l'expiration de ces mandats d'un an, deux Conseillers Exécutifs seront élus conformément à l'Article 14. A l'expiration des mandats de deux ans, deux Conseillers Exécutifs seront élus conformément à l'Article 14. A l'expiration des mandats de trois ans, l'élection des Conseillers Exécutifs deviendra entièrement conforme à l'Article 14.

Article 25**Caducité de la 7ème Partie**

Lorsque l'élection de tous les Conseillers Exécutifs sera devenue entièrement conforme à l'article 14, la présente 7ème Partie deviendra caduque et sera supprimée dans toute publication ultérieure des présents Statuts.

Officers

MEMBERS OF THE EXECUTIVE COUNCIL *
MEMBRES DU CONSEIL EXÉCUTIF *

<i>President - Président:</i>	Allan PHILIP
<i>President ad honorem:</i> <i>Président ad honorem:</i>	Francesco BERLINGIERI
<i>Vice-Presidents:</i> <i>Vice-Présidents:</i>	William BIRCH-REYNARDSON Hishashi TANIKAWA
<i>Secretary General:</i> <i>Secrétaire Général:</i>	Norbert TROTZ
<i>Administrator:</i> <i>Administrateur:</i>	Leo DELWAIDE
<i>Treasurer:</i> <i>Trésorier:</i>	Henri VOET
<i>Members:</i> <i>Membres:</i>	David ANGUS Luis COVA ARRIA Karl-Johan GOMBRII Patrick J.S. GRIGGS Rolf HERBER Jean-Serge ROHART Ron SALTER Frank L. WISWALL, Jr.

* The addresses of the Members of the Executive Council may be found either in the section relating to the Maritime Law Association to which they belong, or in the list of the Titulary Members.

Member Associations

MEMBER ASSOCIATIONS ASSOCIATIONS MEMBRES

ARGENTINA

ASOCIACION ARGENTINA DE DERECHO MARITIMO

(Argentine Maritime Law Association)

c/o Dr. José Domingo Ray, 25 de Mayo 489, 5th Fl.,
1339 Buenos Aires. - Telex: 27181 - Fax: 313-7765

Established: 1905

Officers:

President: Dr. José Domingo RAY, 25 de Mayo 489, 5th Fl., 1339 Buenos Aires Tel: 311-3011/4 - 313-6620/6617 - Fax: 313-7765 Tlx: 27181

Vice-Presidents:

Dr. Antonio Ramon MATHE, Piedras 77, 6th Fl., 1070 Buenos Aires Tel: 343-8460/8484 - Fax: 334-3677 - Tlx: 22331

Dr. Alberto C. CAPPAGLI Carlos Pellegrini 887 - 1338 Buenos Aires Tel: 322-8336/8796 - 325-3500 - Fax: 322-4122 Tlx: 24328 - 27541

Secretary: Dr. M.Domingo LOPEZ SAAVEDRA, Corrientes 1145, 6th Fl., 1043 Buenos Aires Tel: 325-5868/8704/8407 - Fax: 325-9702

Pro-Secretary: Dr. Fernando ROMERO CARRANZA, L.N. Alem 1067, 15th Fl., 1001 Buenos Aires Tel: 313-6536/9619 - 311-1091/9

Treasurer: Sr. Francisco WEIL, Pte. J.D. Peron 315 - 4th Fl., 1394 Buenos Aires Tel: 342-0081/3 - Fax: 361-7150 - Tlx: 22521

Pro-Treasurer: Dr. Carlos R.LESMI, Lavalle 421 - 1st Fl., 1047 Buenos Aires Tel: 393-5292/5393 - Fax: 393-5889 - Tlx: 25640

Members: Dr. Abraham AUSTERLIC, Sr. Jorge CONSTENLA, Sr. Ferruccio DEL BE-NE, Dr. Carlos LEVI, Dr. Marcial J.MENDIZABAL, Dr. Alfredo MOHORADE

Honorary Vice-President: Dr. Alberto N. DODERO

Titulary Members:

Jorge BENGOLEA ZAPATA, Dr.Alberto C.CAPPAGLI, Dr.F.ROMERO CARRANZA, Dr.Domingo Martin LOPEZ SAAVEDRA, Dr.Antonio MATHE, Dr. Marcial J. MENDIZABAL, Dr.Alfredo MOHORADE, Dr.José D. RAY, Dra.H.S.TALAVERA, Francisco WEIL.

Membership:

*Part I - Organization of the CMI***AUSTRALIA AND NEW ZEALAND****THE MARITIME LAW ASSOCIATION OF
AUSTRALIA AND NEW ZEALAND**

c/o the Executive Secretary, Andrew TULLOCH,
Phillips Fox
120 Collins Street
Melbourne VIC 3000, Australia
Tel: 274 5000 - Telefax: 274 5111

Established: 1974

Officers:

President: Ian MAITLAND, Finlaysons, GPO Box 1244, Adelaide 5001, Australia, Tel.: 235 7400 - Fax: 232 2944.

Australian Vice-President: Ms. Anthe PHILIPPIDES, Griffith Chambers, 239 George Street, Brisbane 4000, Australia, Tel.: 229 9188 - Fax: 210 0648.

New Zealand Vice-President: Tom BROADMORE, Chapman Tripp Sheffield Young, P.O. Box 993, Wellington, New Zealand, Tel.: 499 5999 - Fax: 472 7111.

Executive Secretary: Andrew TULLOCH, Phillips Fox, GPO Box 4301PP, Melbourne 3001, Australia, Tel.: 274 5000 - Fax: 274 5111.

Assistant Secretary: John LEAN, Botany Bay Shipping Company Australia Pty Ltd., 6/6 Glen Street, Milsons Point 2061, Australia, Tel.: 929 4344 - Fax: 959 5637.

Treasurer: Drew JAMES, Norton Smith and Co., GPO Box 1629, Sydney 2001, Australia, Tel.: 930 7500 - Fax: 930 7600.

Immediate Past President: Stuart HETHERINGTON, Ebsworth and Ebsworth, GPO Box 713, Sydney 2001, Australia, Tel.: 234 2366 - Fax: 235 3606.

Titulary Members:

The Honourable Justice K.J. CARRUTHERS, I. MACKAY, R. SALTER, P.G. WILLIS.

Membership:

635.

BELGIUM**ASSOCIATION BELGE DE DROIT MARITIME
BELGISCHE VERENIGING VOOR ZEERECHT**

(Belgian Maritime Law Association)

c/o Firme HENRY VOET-GENICOT, Mechelsesteenweg 203 bus 6
B-2018 Antwerpen 1 - Telex: 31653 - Tel.: (03)218.74.64 - Fax: (03)218.67.21

Established: 1896

Officers:

President: Roger ROLAND, Antoon van Dijkstraat 2, bus 5, B-2018 Antwerpen 1 - Tel.: 03/232.44.08 - Fax: 03/225.13.58.

Member Associations

Vice-Presidents:

Jozef VAN DEN HEUVEL, Schermersstraat 30, B-2000 Antwerpen 1, Belgique.
 Jean COENS, Avocat, Frankrijklei 115, B-2000 Antwerpen 1, Belgique - Tel.:
 03/233.97.97/96, Tlx: 72748 EULAW B.

Secretary: Henri VOET Jr., Mechelsesteenweg 203 bus 6, B-2018 Antwerpen 1.

Treasurer: Leo DELWAIDE, Markgravestraat 9, B-2000 Antwerpen Tel.: 32.3.231.56.76
 - Fax: 32.3.225.01.30.

Administrative Secretary: Messrs. Henry VOET-GENICOT, Mechelsesteenweg 203 bus
 6, 2018 Antwerpen 1.

Titulary Members:

Claude BUISSERET, Jean COENS, Leo DELWAIDE, Albert DUCHENE, Geoffrey FLET-
 CHER, Paul GOEMANS, Etienne GUTT, Marc A.HUYBRECHTS, Victor JANSSENS,
 Herman LANGE, Roger ROLAND, Lionel TRICOT, Jozef VAN DEN HEUVEL,
 Jacques VAN DOOSSELAERE, Philippe VAN HAVRE, Jean VAN RYN, Léo VAN VA-
 RENBERGH, Henri F.VOET, Henri VOET Jr.

Membership:

121

BRAZIL**ASSOCIACAO BRASILEIRA DE DIREITO MARITIMO**

(Brazilian Maritime Law Association)

Rua México, 111 GR 501, Centro, CEP 20031-145

Rio de Janeiro - RJ. Brasil Tel.: 220.5488 - Fax: 220 7621

Established: 1961

Officers:

President: Pedro CALMON FILHO, Pedro Calmon Filho & Associados, Av. Franklin
 Roosevelt, 194/801, Rio de Janeiro, RJ.CEP 20021 (Tel.: 220.2323 - Tlx: 21.21606 PCFA
 BR).

Secretary General: José SPANGENBERG CHAVES

Vice-Presidents: Alvaro MARTINHO PAES da SILVA, Délio MAURY, Gilson FERNAN-
 DES TAVARES, Judge Maria Cristina de OLIVEIRA PADILHA

Titulary Members:

Pedro CALMON Filho, Maria Cristina DE OLIVEIRA PADILHA, Carlos DA ROCHA
 GUIMARAES, Walter de SA LEITAO, Jorge Augusto DE VASCONCELLOS, Stenio
 DUGUET COELHO, Rucemah Leonardo GOMES PEREIRA.

Membership:

Physical Members: 350; Official Entities as Life Members: 22; Juridical Entity Members:
 20; Correspondent Members: 15.

Part I - Organization of the CMI

CANADA

CANADIAN MARITIME LAW ASSOCIATION ASSOCIATION CANADIENNE DE DROIT MARITIME

c/o John A. Cantello, Osborn & Lange Inc.
360 St. Jacques Ouest - Suite 2000, Montréal, Quebec H2Y 1P5
Tel.: (514)849-4161 - Fax: (514)849-4167

Established: 1951

Officers:

President: Ms. Johanne GAUTHIER, Ogilvy, Renault, 1981 McGill College Ave., Suite 1100, Montreal, Quebec H3A 3C1. Tel.: (514) 847-4469, Fax: (514) 286-5474.

Immediate Past President: Professor Edgar GOLD, Huestis Holm, 708 Commerce Tower, 1809 Barrington St., Halifax, N.S. B3J 3K8.

Vice-President: Nigel H. FRAWLEY, Meighen Demers, Box 11, 200 King Street West, Merrill Lynch Canada Tower, Sun Life Centre, Toronto, Ontario M5H 3T4, Canada. Tel.: (416) 340-6008, Fax: (416) 977-8421.

Regional Vice-Presidents:

Peter G. BERNARD, Campney & Murphy, P.O.Box 48800, 2100-1111 West Georgia St., Vancouver, B.C. V7X 1K9.

George R. STRATHY, 401 Bay St., Box 69, Suite 2420, Toronto, Ontario M5H 2Y4.

Peter J. CULLEN, Stikeman, Elliott, 1155 René Lévesque Blvd. W., Suite 3700, Montreal, Quebec H3B 3V2.

James E. GOULD, Q.C., McInnes Cooper & Robertson, Cornwallis Place, P.O. Box 730, 1601 Lower Water St., Halifax, N.S. B3J 2V1.

Secretary and Treasurer: John A. CANTELLO, Osborn & Lange Inc., 360 St. Jacques W., Suite 2000, Montreal, Quebec H2Y 1P5.

Chairman of Nominating Committee: Professor Edgar GOLD.

Member of the Executive Council of the CMI: Hon. W. David ANGUS, Q.C., Stikeman Elliott, 1155 René Lévesque Blvd. W., Suite 3700, Montreal, Quebec H3B 3V2, Canada. Tel.: (514) 397-3127 - Fax: (514) 397-3222.

Members of Executive Committee:

Ms. Roza ARONOVITCH, Canada Ports Corporation, 99 Metcalfe St., 9th Fl., Ottawa, Ontario, K1A 0N6.

Michael J. BIRD, Owen Bird, P.O.Box 49130, 595 Burrard Street, 28th Fl., Vancouver, B.C. V7X 1J5.

Gordon L. BISARO, Bisaro & Company, P.O.Box 11547, 2020 - 650 West Georgia St., Vancouver, B.C. V6B 4N7.

Ms. Nancy G. CLEMAN, McMaster Meighen, 630 Blvd. René Lévesque West, Suite 700, Montreal, Quebec H3B 4H7.

Victor De MARCO, Brisset Bishop, 1080 Cote du Beaver Hall, Suite 1400, Montreal, Quebec H2Z 1S8.

Member Associations

Rui M. FERNANDES, Cassels, Brock & Blackwell, 40 King St. W., 2100, Toronto, Ontario M5H 3C2.

John L. JOY, White Ottenheimer & Baker, P.O.Box 5457, Baine Johnston Centre, 10 Fort William Place, St. John's, Nfld. A1C 5W4.

A. William MOREIRA, Daley, Black & Moreira, P.O.Box 355, 1791 Barrington St., Halifax, N.S. B3J 2N7.

John G. O'CONNOR, Langlois Robert Gaudreau, 801 Chemin St. Louis, Suite 160, Quebec, Que. G1S 1C1.

William M. SHARPE, Box 1225, 1644 Bayview Avenue, Toronto, Ontario M4C 3C2.

Constituent Members:

The Association of Average Adjusters of Canada, c/o Anthony E. BRAIN, Braden Marine Inc., 276 St. Jacques West, Suite 107, Montreal, Quebec H2Y 1N3. The Association of Maritime Arbitrators of Canada, c/o Clifford H. PARFETT, Marine Surveyors of Canada Ltd., 6 Desaulniers, Suite 202, St. Lambert, Que. J4P 1L3. The Canadian Board of Marine Underwriters, c/o Douglas McRAE Jr., Marine Underwriters Ltd., 1440 St. Catherine St. West, Suite 600, Montreal, Que. H3G 2T7. The Canadian Shipowners Association, c/o T. Norman HALL, 350 Sparks Street, Suite 705, Ottawa, Ontario K1R 7S8. The Shipping Federation of Canada, c/o Georges ROBICHON, Fednav Limited, 1000 de la Gauchetière St. West, Suite 3500, Montreal, Quebec H3B 4W5. Canadian Marine Response Management Corp., c/o Mr. Victor BENNETT, Suite 1201, 275 Slater St., Ottawa, Ontario K1P 5H9.

Honorary Life Members: W. David ANGUS, Q.C., Mr. William BAATZ, David BRANDER-SMITH, Q.C., John R. CUNNINGHAM, Q.C., Dr. Edgar GOLD, A. Stuart HYNDMAN, Q.C., The Hon. Mr. Justice K.C. MACKAY, Bart N. MALOTT, The Hon. G.R.W. OWEN, The Hon. A.J. STONE, Professor William TETLEY, Q.C.

Titulary Members:

W. David ANGUS, Q.C., David BRANDER-SMITH, Q.C., John A. CANTELLO, John R. CUNNINGHAM, Q.C., Nigel FRAWLEY, Ms. Johanne GAUTHIER, Professor Edgar GOLD, Sean J. HARRINGTON, A. Stuart HYNDMAN, Q.C., John L. JOY, Bart N. MALOTT, Vincent M. PRAGER, Alfred H.E. POPP, Q.C., Robert SIMPSON, The Hon. A.J. STONE, Professor William TETLEY, Q.C.

Membership:

Constituent Members: 16 - Regular Members: 300 - Student Members: 4 - Total Membership including Honoraries & Constituent: 334.

Part I - Organization of the CMI

CHILE

ASOCIACION CHILENA DE DERECHO MARITIMO

(Chilean Association of Maritime Law)

Prat 827, Piso 12, Casilla 75, Valparaiso

Tel.: (5632) 252535 - Tlx: 230398 SANTA CL - Fax: 56.32.252622

Established: 1965

Officers:

President: don Eugenio CORNEJO FULLER, Prat 827, Piso 12, Casilla 75, Fax: 5632 252622, Valparaiso.

Vice-President: Alfonso ANSIETA NUNEZ, Prat 827, Piso 12, Casilla 75, Fax: 5632 252622, Valparaiso.

Secretary: Juan Carlos GALDAMEZ NARANJO, Av.Libertad 63 Oficina 601, Vina del Mar, Fax: 032 680294.

Treasurer: Félix GARCIA INFANTE, Casilla 173-V, Valparaiso.

Member: José Tomas GUZMAN SALCEDO, Huérfanos 835, Oficina 1601, Fax: 5602 382614, Santiago, Chile.

Titulary Members:

don Alfonso ANSIETA NUNEZ, don Eugenio CORNEJO FULLER, don José Tomas GUZMAN SALCEDO.

CHINA

CHINA MARITIME LAW ASSOCIATION

CCPIT Bldg., 1 Fuxingmenwai Street

BEIJING 100860 - CHINA

Tel: 8513344/1804 - Fax: 8511369 - Tlx: 222288 TPLAD CN

Established: 1988

Officers:

President: WU Bingze, President of China National Foreign Trade Transportation Corporation, Jiuling Bldg., 21 Xisanhuan Beilu, Beijing, China. Tel.: 8045968 - Fax: 8405910 - Tlx: 22867 TRANS CN.

Vice-Presidents:

LE Tianxiang, Vice President of China National Foreign Trade Transportation Corporation, Jiuling Bldg., 21 Xisanhuan Beilu, Beijing, China. Tel.: 8045928 - Fax: 8405910 - Tlx: 22867 TRANS CN - Cables: Sinotrans.

Member Associations

ZHANG Zhongye, Deputy Director of Department of Policy & Legislation, Ministry of Communications of the P.R.C. 11, Jianguomennei Dajie Beijing, China.

WU Xiaoping, Vice President of The People's Insurance Company of China, 410, Fuchengmennei Street, Beijing, China. Tel.: 6016688/1012 - Fax: 6011869 - Tlx: 22102/22532 PICC CN.

LEI Hai, Vice President of China Ocean Shipping (Group) Company, Lucky Tower, 3, Dong San Huan Bei Road, Beijing, China. Tel.: 4661188/5823 - Fax: 4669859.

WANG Maoshen, Deputy Chief Judge, Communication & Transportation Court, Supreme People's Court of the P.R.C. 27, Dong Jiao Min Xiang, Beijing, China. Tel.: 5122255-530.

GAO Sunlai, China Global Law Office 3rd Floor, SAS Royal Hotel Beijing, 6A East Beisanhuan Road, Beijing 100028, China. Tel.: 4663388/307 - Fax: 4677891 - Tlx: 222222 CGLO.

LIU Shujian, China Maritime Law Association, CCPIT Bldg., 1, Fuxingmenwai Street, Beijing, China. Tel.: 8513344/1807 - Fax: 8511369 - Tlx: 222288 TPLAD CN.

ZHU Zengjie, China Ocean Shipping (Group) Company, Lucky Tower, 3, Dong San Huan Bei Road, Beijing, China. Tel.: 4661188/5926 - Fax: 4669859 - Tlx: 210740 CPC CN.

SI Yuzhuo, President of Dalian Maritime University, Dalian 116024, China. Tel.: 4671271 Fax: 0411-471395 - Tlx: 86175 DMC CN.

YIN Dongnian, Shanghai Maritime University, 1550, Pudong Dadao, Shanghai, China. Tel.: 21-8842337 - Fax: 21-8840909 - Tlx: 33557 SOR CN.

Secretary General: LIU Shujian, China Maritime Law Association CCPIT Bldg., 1, Fuxingmenwai Street, Beijing, China. Tel.: 8513344/1807 - Fax: 8511369 - Tlx: 222288 TPLAD CN.

Deputy Secretary General: MENG Yuqun, China National Foreign Trade Transportation Corporation, Erligou Xijiao, Beijing, China. Tel.: 8494470 - Fax: 8317664.

Treasurer: WANG Haiming, The People's Insurance Company of China, International Department, 410, Fuchengmennei Dajie, Beijing, China. Tel.: 6016688/1130 - Fax: 6011869 - Tlx: 22102/22532 PICC CN - Cables: 42001.

Members:

Mrs. YU Tianwen, China Ocean Shipping (Group) Company, Executive Division Legal Affairs Department, Lucky Tower, 3, Dong San Huan Bei Road, Beijing, China. Tel.: 4661188/5926 - Fax: 4669859 - Tlx: 210740 CPC CN.

ZHU Jianxin, Department of Foreign Affairs, Ministry of Communications of the P.R.C. 11, Jianguomennei Dajie, Beijing, China. Tel.: 3265544/2462 - Fax: 3273943 - Tlx: 22462 COMCT CN.

QU Zhiguang, Communication & Transportation Court of the Supreme People's Court of the P.R.C. 27, Dong Jiao Min Xiang, Beijing, China. Tel.: 5120831.

Mrs. CHEN Zhenying, China Maritime Law Association CCPIT Bldg., 1, Fuxingmenwai Street, Beijing, China. Tel.: 8513344/1804 - Fax: 8511369 - Tlx: 222288 TPLAD CN.

Membership:

Group members: 89 - Individual members: 1600

Part I - Organization of the CMI

COLOMBIA

ASOCIACION COLOMBIANA DE DERECHO MARITIMO COMERCIAL

Edificio Chico Plaza Cra. 15 No. 99-13 Ofc. 503/504
Santafé de Bogota D.C., Colombia
Tlx: 45738 - Fax: 610.93.79 - Tel.: 610.93.29

Established: 1980

Officers:

President: Ms. Ana Lucia ESTRADA.

Vice-President: Dr. Juan Manuel PRIETO.

Members of the Executive Committee

Principals: Dr. Jorge Suescun MELO, Dr. Ricardo SARMIENTO, Dr. Jorge Alberto RODRIGUEZ.

Alternates: Dr. Jaime Canal RIVAS, Dr. Carlos Alfonso RAMIREZ, Dr. Reglio VALENCIA.

Internal Auditor: Admiral (R) Hernando CAMACHO.

Alternate Auditor: Dr. Diego MUNOZ.

Secretary: Dra. Narda Patricia RAMIREZ.

Titulary Members:

Dr. Guillermo SARMIENTO RODRIGUEZ, Capt. Sigifredo RAMIREZ.

COSTA RICA

ASOCIACION INSTITUTO DE DERECHO MARITIMO DE COSTA RICA

(Maritime Law Association of Costa Rica)
P.O. Box 784, 1000 San José, Costa Rica
Tel.: (506) 34.6710 - Fax:(506) 34.1126

Established: 1981

Officers:

President: Lic. Tomas Federico NASSAR PEREZ, Abogado y Notario Publico. Apartado Postal 784 (1000) San José.

Vice-President: Licda. Roxana SALAS CAMBRONERO, Abogado y Notario Publico, Apartado Postal 1019, 100 San José.

Secretary: Lic. Luis Fernando CORONADO SALAZAR

Treasurer: Lic. Mario HOUED VEGA

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HRVATSKO UDRUZENJE ZA POMORSKO PRAVO

(Croatian Maritime Law Association)

c/o Prof.Dr.Velimir Filipovic, President, Fakultet za pomorstvo i saobraćaj
Studentska 2, 51000 RIJEKA - Tel.: 051.384.11 - Fax: 051.36.755

*Established: 1991*Officers:

President: Prof. Dr. Velimir FILIPOVIC, Professor of Maritime and Transport Law at the University of Zagreb. Trg. Marsala Tita 14, 41001 Zagreb - Fax: 38.41.464030.

Vice-Presidents:

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Predrag STANKOVIC, Professor, University of Rijeka, Studentska 2, 51 000 Rijeka.

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Treasurer: Vinko HLACA, Associate Professor, University of Rijeka, Hahlic 6, 51 000 Rijeka.

Titulary Members:

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Membership:

Institutions: 32 Individual Members: 120

DENMARK

DANSK SORETSFORENING

(Danish Branch of Comité Maritime International)

c/o Gorrissen & Federspiel

12 H.C. Andersens Boulevard DK-1553 Copenhagen V, Denmark
Tel.: (45) 33.15.75.33 - Tlx: 15.598 GFJUS - Fax: (45) 33.15.68.02

*Established: 1899*Officers:

President: Jan ERLUND, Gorrissen & Federspiel, H.C. Andersens Boulevard 12, 1553 København K. Tel.: 33.15.7533 - Fax.: 33.15.6802.

Treasurer and Secretary: Axel KAUFMANN, Skoubogade, 1, DK-1158 København K.

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Membership:

Approximately 89

Part I - Organization of the CMI

ECUADOR

ASOCIACION ECUATORIANA DE ESTUDIOS Y DERECHO MARITIMO - "ASEDMAR"

(Ecuadorian Association of Maritime Studies and Law)

Vélez 513, 6to. piso, Edificio Acropolis,

P.O. Box 3548, Guayaquil, Ecuador

Tel.: 320714 - Tlx: 4-3733 MAPOLO ED - Fax: (593-4) 322751

Established: 1988

Officers:

President: Ab. Jose Modesto APOLO T., Vélez 513 y Boyaca, 6to piso, Guayaquil, Ecuador Tel.: 517674/320714.

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Dr. Publio FARFAN, Elizalde 101 y Malecon (Asesoría Jurídica Digmer) Tel.: 324254.

Capt. Pablo BURGOS C., (Primera Zona Naval) Tel.: 341238/345317.

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Ab. Jaime MOLINARI, Av. 25 de Julio, Junto a las Bodegas de Almagro, Tel.: 435402/435134.

Ab. Carlos L. ORTEGA S., Banco de Fomento, Panama 704, Tel.: 560111.

EGYPT

EGYPTIAN MARITIME SOCIETY

32, Salah Salem Str. (Sherif Passage)

P.O. Box 1506

Alexandria, Egypt.

Tel. 4828681 - Tlx. 54046 UN - Fax. 4821900

Established: 1979

Officers:

President: Dr. Eng. Ahmed M. EFFAT, former Minister of Maritime Transport, 10 Abbani Str. Zezinia, Alexandria. Tel. 5873750.

Vice-President: Dr. Ali EL-BAROUDY, Prof. of Commercial & Maritime Law, Alexandria University. Tel. 5876097.

General Secretary: Ex Admiral Saleh M. SALEH, Advocate, Alexandria. Tel. 5977702.

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Member Associations

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- Ex. Admiral Reda ZL. GOMAA, Advocate, 42 Abdel Latif El Soufani Str. Sidey Jaber, Alexandria. Tel. 8482263.
- Ex. Admiral Mugib M. HILAL, Manager of the Societies Services Center in the Arab Maritime Academy, 32 Salah Salem Str. Alexandria. Tel. 4828681.
- Dr. Hesham A. SAADEK, Prof. of International Private Law, Alexandria University.
- Mr. Saaid M. SALEM, Accountant, 18 Talaat Harb Str., Alexandria. Tel. 4832409.
- Mr. Mohamed Megahed MAHMOUD, 71 Port Said Str., Alexandria. Tel. 5971648.
- Ex. Admiral Farouk M. MALASH, Lecturer in the Arab Maritime Academy, Alexandria, Tel. 861497.
- Ex. Admiral Mohamed M. FAHMEY, 10 A Mohamed Faried, Boulkily, Alexandria. Tel. 865099.
- Mr. Samir M. ABO ELKOAL, Legal Consultant at Alexandria Port Authority, Tel. 4919327.

FINLAND

SUOMEN MERIOOOIKEUSYHDISTYS FINLANDS SJÖRÄTTSFÖRENING

(Finnish Maritime Law Association)
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Gezeliusgatan 2, 20500 Abo, Finland
Tel.: 358.21-654321 - Fax: 358.21-654699

Established: 1939

Officers:

President: Peter WETTERSTEIN
Vice-President: Nils-Gustaf PALMGREN
Secretary: Peter SANDHOLM

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Membership:

Private persons: 79 - Firms: 24.

Part I - Organization of the CMI

FRANCE

ASSOCIATION FRANCAISE DU DROIT MARITIME

(French Association of Maritime Law)

47, rue de Monceau - 75008 Paris

Correspondence to be addressed to Philippe BOISSON

Conseiller Juridique, Bureau Veritas,

17 bis Place des Reflets, Cedex 44 - 92077 Paris La Defense

Tel.: (1) 42.91.52.71 - Fax: (1) 42.91.52.94

*Established: 1897*Officers:*Président:* Professeur Pierre BONASSIES, Faculté de Droit et de Sciences Politiques d'Aix Marseille, Chemin des Portails, 13510 Eguilles, France.*Présidents Honoraires:*

Pierre LATRON, 47 rue de Monceau, 75008 Paris, France.

Claude BOQUIN, S.A. Louis Dreyfus & Cie., 87, av. de la Grande-Armée, 75782 Paris, Cedex 16, France.

Vice-Présidents:

Mme Françoise MOUSSU-ODIER, Comité Central des Armateurs de France, 73, Boulevard Haussmann, 75008 Paris, France.

Pierre EMO, Parc d'Activités Technologiques de La Vatine, 41, rue Raymond-Aron, 76130 Mont-St Aignan, France.

Secrétaire Général: Philippe BOISSON, Bureau Veritas, 17 bis Place des Reflets, Cedex 44, 92077 Paris-La Défense, France.*Secrétaires Généraux Adjointes:*

Jean-Claude BULHER, Résidence Les Arômes, 66, rue de Crimée, 75019 Paris, France.

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Trésorier: Jean-Serge ROHART, Villenau Rohart Simon & Associés, 12 Bld. de Courcelles, 75017 Paris, France.Titulary Members:

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Membership:

Members: 316 - Corporate members: 44 - Corresponding members: 37

Member Associations

GERMANY

DEUTSCHER VEREIN FÜR INTERNATIONALES SEERECHT

(German Maritime Law Association)

Esplanade 6, 20354 Hamburg

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*Established: 1898*Officers:*President:* Dr. Hans-Christian ALBRECHT, Weiss & Hasche, Valentinskamp 88, 20355 Hamburg.*Vice-President:* Dr. Thomas M.REME, Röhreke, Boye, Remé & v. Werder, Ballindamm 26, 20095 Hamburg.*Secretary:* Dr. Hans-Heinrich NÖLL, Verband Deutscher Reeder, Esplanade 6, 20354 Hamburg.Titulary Members:

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Prof. Dr.Norbert TROTZ, Director of Institut für Handels- und Seerecht zu Rostock, Kosfelder Strasse 11/12, Postfach 105170, 18055 Rostock.

Membership:

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(Association Hellenique de Droit Maritime)

Dr. A. Antapassis, Akti Poseidonos 10, 185 31 Le Pirée

Tel.: (301) 4225181 - Tlx: 211171 Alan GR - Fax: (301) 4223449

*Established: 1911*Officers:*President:* Dr. Antoine ANTAPASSIS, Associate Professor at the University of Athens, Advocate, Akti Poseidonos 10, 185 31 Piraeus. Tel: (301) 4225181 (4 lines) - Tlx: 211171 Alan GR - Fax: (301) 4223449.*Vice-Presidents:*

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Paul AVRAMEAS, Advocate, Filonos 133, 185 36 Piraeus. Tel: (301) 4294580/4294687 Tlx: 212966 Ura GR - Fax: (301) 4294511.

Secretary-General: Panayotis MAVROYIANNIS, Advocate, Hiroon Polytechniou 96, 185 36 Piraeus. Tel: (301) 4510249/4510562/4133862 - Tlx: 212410 Lexm GR - Fax: (301) 4535921.*Deputy Secretary-General:* Thanos THEOLOGIDES, Advocate, Bouboulinas 25, 185 35 Piraeus. Tel: (301) 4122230/4114496-7 - Tlx: 1504 Teo GR - Fax: (301) 4114497.*Secretaries:*

Elias DIMITRIOU, Advocat, Omirou 50, 106 72 Athens. Tel: (301) 3637305/3635618 - Tlx: 214168 Peca GR - Fax: (301) 3603113.

Defkalion REDIADES, Advocate, Skouze 26, 185 63 Le Pirée. Tel: (301) 5423752/4529070/4511449 - Tlx: 218253 Ura GR - Fax: (301) 3646674.

Treasurer: Petros CAMBANIS, Advocate, Omirou 50, 106 72 Athens. Tel: (301) 3637305/3635618 - Tlx: 214168 Peca GR - Fax: (301) 3603113.*Members:*

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Christos ACHIS, Ioannis PERRAKIS, George REDIADES, Panayotis SOTIROPOULOS, Kyriakos SPILIOPOULOS.

Membership:

Member Associations

HONG KONG

THE MARITIME LAW ASSOCIATION OF HONG KONG

c/o Ince & Co., Solicitors and Notary Public,
 Mr. Steven Hazelwood, 26th Floor, Asia Pacific Finance Tower,
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 Tel.: 877.32.21 - Tlx: 65.582 - Fax: 877.2633

Established: 1988

Members:

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ICELAND

HID ISLENSKA SJORETTARFELAG

(The Icelandic Maritime Law Association)
 University of Iceland, Faculty of Law,
 101 Reykjavik, Iceland
 Fax: 354-1-21331

Established: 1982

Officers:

Chairman: Jon FINNBJORNSSON, Judge at the First Instance, Lögreglustjorinn a Keflavikurflugvelli, 253 Keflavikurflugvöllur.

Vice Chairman: Valgard BRIEM, Soleyjargötu 17, 101 Reykjavik.

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Treasurer: Jon H.MAGNUSSON, Confederation of Icelandic Employers, Gardastraeti 41, 101 Reykjavik.

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Bjarni K.DJARNACON, Judge of the Supreme Court, Haestiréttur, 150 Reykjavik.

Jonas HARALDSSON, c/o Landsamband Isenskra Utvegsmanna, Hafnerh volu v. Tryggvagotu, 101 Reykjavik.

Thorarinn IVARSSON, Head of Department, Samskip, Sambandshusinu Kirkjusandi, 105 Reykjavik.

Pall SIGURDSSON, Professor, Faculty of Law, University of Iceland, 101 Reykjavik.

Part I - Organization of the CMI

INDIA

THE MARITIME LAW ASSOCIATION OF INDIA

Established: 1981

Officers:

President: (vacancy)

Vice-President: G.A.SHAH, Advocate, Supreme Court of India, 101, Jor Bagh, New Delhi 110 003.

Executive Secretary and Treasurer: R.A.SOMANATHAN.

Secretary General: Dr. R.K.DIXIT, L-42, Kalkajec, New Delhi 110 019.

Titulary Members:

Mrs. Sumati MORARJEE, Mr. L.M.S. RAJWAR.

INDONESIA

LEMBAGE BINA HUKUM LAUT INDONESIA

(Indonesian Institute of Maritime Law and Law of The Sea)

Jl. Pintu Air Raya No.52,

2th Floor Jakarta 10710, Indonesia

Tel.: 62.021.361952/361725 - Fax: 62.021.3905772 - Tlx: 61521 CMYD IA

Established: 1981

Board of Management:

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Vice: Mrs. Titiuk PUJOKO, S.H., Vice Director at PT. Gatari Air Service, Bandar udara Halim Perdana Kusuma, Jakarta 13610, Indonesia. Tel.: 62.021.8092472.

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Vice: Mrs. Soesi SUKMANA, S.H., PT. PELNI, Jl. Gajah Mada No.14, 2th floor, Jakarta, Indonesia. Tel.: 62.021.3854173.

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- Chief of Dept. Information Law service:* Mrs. Aziar AZIS, S.H., Legal Bureau BULOG, Jl. Gatot Subroto, Jakarta, Indonesia. Tel.: 62.021. 512209.
- Vice:* Amir HILABI, S.H., Amir Hilabi & Ass., Jl. Biru Laut Raya No.30, Cawang Kaping, Jakarta, Indonesia. Tel.: 62.021.8190538.
- Chief of Dept. Legal Aid:* Mrs. Titiek ZAMZAM, S.H., Titiek Zamzam & Ass., Jl. Ex. Komplek AURI no. 6 Rt.005/03, Jakarta 12950, Indonesia. Tel.: 62.021.516302.
- Public Relation Service:* Mrs. Neneng SALMIAH, S.H., Notaris Neneng Salmiah Jl. Suryo No.6 Kebayoran Baru, Jakarta, Indonesia. Tel.: 62.021.7396811 - 7221042.
- General Assistance:* Z. FARNAIN, S.H., Chandra Motik Yusuf Djemat & Ass., Jl. Yusuf Adiwinata No. 33, Jakarta 10350, Indonesia. Tel.: 62.021.327 196 - 323340 - Fax: 62.021.3905772.

IRELAND

IRISH MARITIME LAW ASSOCIATION

Warrington House, Mount Street, Crescent, Dublin 2, Ireland
Tel.: 353-1-6607966 - Tlx: 32694 INPC EI - Fax: 353-1-6607952

Established: 1963

Officers:

- President:* J. Niall McGOVERN, 23 Merlyn Park, Dublin 4. Tel/Fax: 353-1-2691782.
- Vice-President:* C.J. DORMAN, Dorman Legal Services, 22 Earlsfort Terrace, Dublin 2. Tel.: 353-1-4784611.
- Hon. Secretary:* Miss Mary SPOLLEN, Irish National Petroleum Corporation, Warrington House, Mount Street Crescent, Dublin 2. Tel.: 353-1-6607966 - Tlx: 32694 - Fax: 353-1-6607952.
- Hon. Treasurer:* Sean KELLEHER, Legal Department, An Bord Baine, Grattan House, Lr.Mount Street, Dublin 2. Tel.: 353-16619599 - Fax: 353-1-6612776.

Titulary Members:

C.J.DORMAN, Paul GILL, Sean KELLEHER, Eamonn A. MAGEE, LL.B., B.L., Miss Petria McDONNELL, Brian McGOVERN, J.Niall McGOVERN, Dermot J. McNULTY, Miss Mary SPOLLEN.

Individual members: 45

Representative members: 38

Part I - Organization of the CMI

ISRAEL

HA-AGUDA HA ISRAELIT LE MISPCHAT YAMI

(Israel Maritime Law Association)

c/o P.G. Naschitz,

Naschitz, Brandes & Co.,

136 Rothschild Boulevard,

Tel-Aviv 65272

Tel.: (972-3)5617766 - Fax: (972-3)5620069/5617535

*Established: 1968*Officers:*President:* Justice Tova STRASSBERG-COHEN, Supreme Court, Jerusalem, Tel. (972-2) 7597171.*Vice-Presidents:*

G. GORDON, S. Friedman & Co., 31 Ha'atzmaut Road, Haifa. Tel.: (972-4)670701 - Fax: (972-4)670754.

P.G. NASCHITZ, Naschitz, Brandes & Co., 136 Rothschild Boulevard, Tel-Aviv 65272.

Tel.: (972-3)6857766 - Fax: (972-3)6857535/6850069

Titulary Members:

Justice Tova Strassberg-Cohen, R. Wolfson.

Members: 57.

ITALY

ASSOCIAZIONE ITALIANA DI DIRITTO MARITTIMO

(Italian Association of Maritime Law)

Via Roma 10 - 16121 Genova

Tlx: 270687 Dirmar - Tel.: (10)586.441 - Fax: (10)594.805

*Established: 1899*Officers:*President:* Francesco BERLINGIERI, O.B.E., President ad honorem of CMI, Former Professor at the University of Genoa, Via Roma 10 - 16121 Genova.*Vice-Presidents:*

Giorgio CAVALLO, Via Ceccardi 4 - 16121 Genova.

Giuseppe PERASSO, Director of Confederazione Italiana Armatori, Piazza SS. Apostoli 66 - 00187 Roma.

Secretary General: Giorgia M. BOI, Professor at the University of Genoa, Via Roma 10 16121 Genova.*Councillors:*

Sergio M. CARBONE, Via Assarotti 20 - 16122 Genova.

Bruno DE VITA, Via G. Orsini 42 - 80132 Napoli.

Member Associations

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 Marcello MARESCA, Via Bacigalupo 4/13 - 16122 Genova.
 Luciano OCCHETTI, Via XX Settembre 36 - 16121 Genova.
 Camilla PASANISI DAGNA, Via del Casaletto 483 - 00151 Roma.
 Emilio PASANISI, Via del Casaletto 483 - 00151 Roma.
 Vittorio PORZIO, Via Monte di Dio 25 - 80132 Napoli.
 Sergio TURCI, Via Ceccardi 4/30 - 16121 Genova.
 Enrico VINCENZINI, Scali d'Azeglio 52 - 57100 Livorno.
 Enzo VOLLI, Via San Nicolò 30 - 34100 Trieste.
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Nicola BALESTRA, Francesco BERLINGIERI, Giorgio BERLINGIERI, Giorgia M. BOI, Franco BONELLI, Sergio M. CARBONE, Sergio LA CHINA, Antonio LEFEBVRE D'OVIDIO, Emilio PASANISI, Camilla PASANISI DAGNA, Francesco SICCARDI, Sergio TURCI, Enrico VINCENZINI, Enzo VOLLI.

JAPAN

THE JAPANESE MARITIME LAW ASSOCIATION

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Established: 1901

Officers:

President: Tsuneo OHTORI, Professor Emeritus at the University of Tokyo, 6-4-508, Hilarigaoka 1-chome, Nerima-ku, Tokyo.
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Part I - Organization of the CMI

KOREA

KOREA MARITIME LAW ASSOCIATION

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Established: 1978

Officers:

President: Dr. BYUNG-TAI Bai, President of the Korea Maritime Institute.

Vice-Presidents:

Mr. HYUN-KYU Park, President of the Korea Maritime Research.

Dr. SANG-HYON Song, Professor at Seoul National University, Seoul.

Dr. DONG-CHUL Lim, Professor at Korea Maritime University, Pusan.

Dr. SOO-KIL Chang, Attorney at Law, Law Firm of Kin & Chang, Seoul.

Dr. KIL-JOON Park, Professor at Yonsei University, Seoul.

Directors:

Dr. LEE-SIK Chai, Professor at Korea University, Seoul.

Dr. JOON-SU Lee, Professor at Korea Maritime University, Pusan.

Membership:

The members shall be faculty members of university above the rank of part-time lecturer, lawyers in the bench, and university graduates who have been engaged in the maritime business and or relevant administrative field for more than three years with the admission approved by the board of directors.

Individual members: 135.

D.P.R. KOREA (PYONGYANG)

MARITIME LAW ASSOCIATION OF D.P.R. KOREA

Mr. PAK JONG IL, Secretary General

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Established: 1989

Officers:

President: Mr. CHA MUN BIN, Jurist, General Court DPR of Korea Vice President.

Vice-President: Mr. RA DONG HI, Engineer, Vice Minister of the Ministry of Marine Transportation.

Secretary-General: Mr. PAK JONG IL, Captain, Director of Legal, Investigation Dep. of the Ministry of Marine Transportation.

Members of the Executive Committee:

Mr. KANG WAN GU, Associated Doctor, Dean of the Maritime University.

Mr. ZO KYONG GU, Captain, Senior Lawyer, Legal, Investigation Dep. of the Ministry of Marine Transportation.

Member Associations

- Mr. JON MYONG SON, Associated Doctor, Professor of Kim Il Sung University.
 Mr. KIM JONG KWON, Associated Doctor, Korea Tonghae Shipping Company Dep.,
 Director of International Maritime Dep.
 Mr. LIM YONG CHAN, Associated Doctor, Institute of Law, Director of International
 Law Department.
 Mr. HWANG GIL HWAN, Officer of Korea Chartering Corporation.

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Established: 1993

Officers:

President: Nagarajah MUTTIAH, Shook Lin & Bok, 20th Floor, Arab-Malaysian Building,
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Part I - Organization of the CMI

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Established: 1994

Officers:

President: Dr. David TONNA, 52, Old Theatre Street, Valletta. Tel.: 232271/223316 - Fax: 244291

Vice-President: Dr. Robert TUFIGNO, 3, Independence Square, Valletta. Tel.: 248025/241507.

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(Mexican Maritime Law Association)

Montes Urales 365, 11000 México, D.F.

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Established: 1961

Officers:

President: Dr. Ignacio L. MELO Jr., General-Director of Asociacion Nacional de Agentes Navieros, A.C., Montes Urales 365, 11000 México, D.F.

Vice-President: Lic. Eduardo SOLARES Jr.

Secretary: Miss Alexandra PRESSLER.

Treasurer: Lic. Ernesto PEREZ REA.

Titulary Members:

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Member Associations

MOROCCO**ASSOCIATION MAROCAINE DE DROIT MARITIME**

(Moroccan Association of Maritime Law)

53, Rue Allal Ben Abdellah - 1er Etage, Casablanca 20.000, Morocco

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*Established: 1955*Officers:*President:* Farid HATIMY BP 8037 Oasis, Casablanca 20103, Morocco. Tel.: (2)911907 - Fax: (2)250201.*Vice-Presidents:*

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VERVOERSRECHT**

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Individual members: 201

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NIGERIAN MARITIME LAW ASSOCIATION

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Established: 1980

Officers:

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Vice-President: Fola SASEGBON, 6 Ijora Causeway, Ijora - Box 245, Lagos, Nigeria.
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Member Associations

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DEN NORSKE SJORETTSFORENING

Avdeling av Comité Maritime International

(Norwegian Maritime Law Association)

c/o Mr. Karl-Johan GOMBRII

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Established: 1899

Officers:

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Membership:

Company Members: 33 - Personal Members: 261

*Part I - Organization of the CMI***PANAMA****ASOCIACION PANAMENA DE DERECHO MARITIMO**

(Panamanian Maritime Law Association)

Ms. Alida Benedetti, Secretary c/o Benedetti & Benedetti
 P.O. Box 850120, Panama 5, Republic of Panama

*Established: 1978*Officers:

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Vice-President: Ricardo ESKILDSEN
Secretary: Ms. Alida BENEDETTI
Treasurer: Raul JEAN
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Assistant Treasurer: Francisco MATA
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Titulary Members:

Dr. Woodrow de CASTRO, Dr. José Angel NORIEGA-PEREZ.

Membership:

145.

PERU**ASOCIATION PERUANA DE DERECHO MARITIMO**

(Peruvian Maritime Law Association)

Calle Chacarilla n° 485, San Isidro, Lima 27 - Peru
 Tel.: 224101/401246/227593 - Tlx: 25634 PE NAFRISA - Fax: 401246

*Established: 1977*Officers:Executive Committee:

President: Dr. Guillermo VELAUCHAGA, Professor of Law at the Law School of the Catholic University of Lima, Av. Arequipa n° 4015, Miraflores.
Past. Presidents:
 Dr. José Maria PAGADOR, José Gonzales n° 568 Of. 302, Miraflores, Lima.
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Dr. Percy URDAY, Calle Chacarilla n° 485, San Isidro, Lima.

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Dr. Luis CHANGANAQUI, Las Orquideas n° 505, San Isidro, Lima.

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Membership:

Company Members: 11 - Individual Members: 65.

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Established: 1981

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Part I - Organization of the CMI

POLAND

POLSKIE STOWARZYSZENIE PRAWA MORSKIEGO

z siedziba w Gdansku
 (Polish Maritime Law Association, Gdansk)
 Maritime Institute, Gdansk
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 Tel.: 48/58/278408 - Fax: 48/58/278590

Established: 1934

Officers:

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Zenon KNYPL, Dr. Iur, Judge of the Court of Appeal at Gdansk.

Secretary General: Janusz GASIOROWSKI, LL.M, Head of Maritime Law Department, Maritime Institute at Gdansk.

Treasurer: Witold JANUSZ, M.L., c/o 'HESTIA' Insurance S.A., ul. M. Reja 13/15, 81-875 Sopot, Poland.

Members of the Board:

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PORTUGAL

MINISTERIO DA DEFESA NACIONAL MARINHA COMISSAO DE DIREITO MARITIMO INTERNACIONAL

(Committee of International Maritime Law)
 Praça do Comércio, 1188 Lisboa Codex
 Tlx: 12587 Cencom P

Established: 1924

Officers:

President: Dr. José Joaquim DE ALMEIDA BORGES.

Vice-President: Vice-Almirante Paulo Joaquim COSTA TEIXEIRA.

Secretary: Dra. Ana Maria VIEIRA MALLEN.

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RUSSIAN FEDERATION

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Established: 1968

Officers:

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S.N. LEBEDEV, Chairman of the Maritime Arbitration Commission, Russian Federation, Moscow.

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Scientific Secretary of scientific publications: Dr. Nelya D. KOROLEVA, Head International Legal Issues of Shipping Department, "Soyuzmorniiproekt", Moscow.

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Secretariat: Port Autonome de Dakar,

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Established: 1993

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PART II

The Work of the CMI

**Sydney II
Documents of the Conference**

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OPENING SESSION

**SYDNEY OPERA HOUSE
2 October 1994**

OPENING OF THE 35th INTERNATIONAL CONFERENCE

SYDNEY OPERA HOUSE - 2 OCTOBER 1994

Speech of Professor Allan Philip President of the CMI

Excellencies, Ladies and Gentlemen, Friends,

Here we are in Sydney for the 35th Conference of the Comité Maritime International. Since CMI was founded 97 years ago in Brussels this is the third conference we hold outside Europe and North America and the second in the southern hemisphere. We have decided that our next conference shall be in Belgium to celebrate our centenary in Antwerp. I am sure, however, that with the many national associations we now have in countries outside Europe and North America we shall in the next century meet in such countries to an increasing extent.

We are indeed grateful to the Maritime Law Association of Australia and New Zealand for having undertaken to arrange this Conference in the beautiful city of Sydney and for making it possible for us to open our Conference in this splendid structure, the Opera House, one of the wonders of the world today. A special pleasure for me since it was designed by the architect Jorn Utzon, one of my compatriots.

We are looking forward to spending this week in Sydney and its surroundings and to get to know this part of Australia and the State of New South Wales. And many of us will utilize the opportunity to visit other parts of the country and become familiar with a country which, because it is so far away from most of us, is subject to so many myths. Although a young country in our sense of the word it is a very old place with a culture of its own far back in time. We just saw an example of that culture and recently we had an opportunity of seeing an exhibition of other expressions thereof in my country. And Australia has natural wonders which may compete with those anywhere else.

I wish already to thank the MLA of Australia and New Zealand in the person of Stuart Hetherington and his team of assistants for all the work they have put into the preparation of the Conference. They have, quite apart from the meetings themselves, a lot of interesting things in store for us, and their efforts which I have been able to follow must yield marvellous results for all of us.

As you know, the aim of the CMI is to unify maritime law in order to ease the exercise of shipping and thereby to further international trade which has become increasingly important to the world at large. We work to achieve this aim by drawing on the knowledge and expertise of the members of our national associations and in close cooperation with the

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international organizations which are active in the field of shipping. That is in particular the UN organizations IMO and UNCTAD and also UNCITRAL and the IOPC Fund but also a number of other governmental and non-governmental organizations, many of which are represented here by Observers. We welcome them and thank them for coming and for permitting us to work together with them in furtherance of our common goal.

Three subjects will in particular be in the forefront of our work this week.

The York-Antwerp Rules, which were first adopted in 1864, have since been revised a number of times by the efforts of the CMI, most recently in 1974 with an amendment in 1990. On the initiative of UNCTAD they have been subject to extensive discussions both with regard to the idea, which is basic to them, of sharing the perils of the sea between ship and cargo and with regard to details of the regulation. As a result of close cooperation between the average adjusters, the insurers and the CMI and always in contact with UNCTAD a revised set of rules is presented to this Conference by an international subcommittee headed by David Taylor. It remains to be seen whether and if so, how it meets with the approval of the Conference. Many views, including the view that general average and with it the York-Antwerp Rules should be completely abolished, have been proffered. In most countries the Rules are not subject to legislation and they are not contained in a convention but are agreed by the parties to the contract of carriage. In the end the decision to apply them is, therefore, not with us but with the industry. What we do is to offer them to the industry for use as and when it pleases.

Pollution is the theme of the day and the CMI has been closely involved in the subject ever since the Torrey Canyon accident put it on the agenda in 1968. It will remain with us for a long time to come.

Although it is now thoroughly regulated both by international convention and national law there is no agreement as to which claims for damage should be admitted or how damages should be assessed. This is true as between the USA and the countries participating in the CLC Convention. But it is also true within the area of application of the latter.

An international subcommittee headed by Norbert Trotz has in close cooperation with the International Oil Pollution Compensation Fund been drawing up guidelines on the subject. As with the York-Antwerp Rules they are not meant to be a draft convention to be adopted by governments at a diplomatic conference. Rather the idea is that they should be accepted in administrative and judicial practice thanks to their persuasive effect.

At the Rio Conference in 1977 the CMI adopted a draft convention on Offshore Mobile Craft, such as drilling rigs and other craft used at sea.

At the request of IMO an international subcommittee under the chairmanship of Frode Ringdal has revised that convention and brought it up to date and it will be discussed here and then sent to IMO.

However, the idea of broadening the scope of the Convention to cover

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not only mobile craft but also fixed structures has been brought forward, in particular by the MLAs of USA and Canada. Even that will be discussed at the Conference.

Within recent months other subjects have taken on new actuality. The liability system at sea is based mainly upon the 1976 Convention on the Limitation of Shipowners' Liability supplemented by the CLC Convention. The possibility of a convention on hazardous and noxious substances being adopted in 1996 raises the issue of a revision of the 1976 Convention. A working group within the CMI has been looking at the problem and will report to the Conference. The subject will undoubtedly be on the Agenda of the CMI following this Conference.

The Position of Classification Societies is the subject of a Working Group between the CMI and a number of other organizations including the association of the Classification Societies and the insurance companies and P&I Clubs. The CMI members of the group will report to the Conference on this work.

The Agenda also includes a small symposium on a subject of Marine Insurance.

The Hamburg Rules have come into force, although most important shipping nations still adhere to the Hague Visby Rules, which have very recently been adopted by Japan and Mexico. The subject of how to avoid proliferation of rules on carriage of goods by sea rather than unification has been discussed recently in UNCITRAL, and it is discussed in the Executive Council which contribution the CMI can give towards a solution which will make it possible to reach a result permitting a uniform solution.

You will see that the Agenda is very rich with something for every taste and that there is important work to be done for the CMI even in the future. I wish you all a pleasant and fruitful Conference.

* * *

We are holding this Conference in the State of New South Wales. The Chief Justice of New South Wales, Mr. Murray Gleeson, who is at the same time also the Lieutenant Governor of the State has shown us the honour to be present on this occasion and open the Conference. Chief Justice Gleeson was admitted to the bar in 1963 and was appointed Q.C. in 1974. He has taught at Sydney University and has been president of the New South Wales Bar Association. He is a bencher of the Middle Temple and an officer and companion of the Order of Australia. He has appeared several times before the Privy Council in important shipping cases.

I now give you Chief Justice Gleeson.

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**Speech of The Honourable Murray Gleeson A.C.
Chief Justice of New South Wales**

It is a great pleasure to open the 35th International Conference of this important body, and to add my voice to those who have wished you a warm welcome to Sydney, and to New South Wales.

The list of distinguished delegates from so many overseas countries testifies to the importance of your organization and to the breadth of its influence. On behalf of the judiciary of New South Wales, may I say that we are delighted and honoured that you have chosen Sydney as the venue for your conference, and we hope that you will have a fruitful and thoroughly enjoyable time during your visit.

It is my understanding that, since its foundation in Antwerp in 1897, the CMI has grown to comprehend approximately 50 national associations. Inspired by the ideal of progress towards a uniform maritime law, the CMI has made, over almost a century, and continues to make, a major contribution to the codification and development of maritime law. In recent years, no doubt, the expansion of the role of international and intergovernmental agencies has resulted in some change in focus in the activities of the CMI but a world-wide organization, representative of private interests active in the maritime field, has an enormous contribution to make in co-operation with governmental and inter-governmental authorities.

The principal activities that you have selected for your conference this week give a clear indication of the importance of the ongoing work of the CMI. I wish you every success in the work you have set for yourselves.

With all the emphasis that is rightly placed upon the international significance of maritime law, it is also useful to remind ourselves of the contribution made by maritime cases to the development of domestic law. Litigation arising out of the transportation by sea of passengers and goods has, as a matter of history, provided the occasion for the development of legal principles that are of much wider significance. This can be demonstrated simply by taking a few examples of litigation arising out of incidents that occurred in or near the waters around Sydney, quite close to where we are this evening.

Australian law on such topics of general importance as the role of foreseeability of harm in the law of negligence and nuisance, privity of contract, and the recoverability of damages for economic loss, has been shaped by cases arising from events that occurred not far from Bennelong Point.

Consider, for example, the litigation, involving two appeals to the Judicial Committee of the Privy Council, that arose out of a fire that occurred in Sydney Harbour in November 1951¹. A vessel named the *Wagon Mound* had been taking bunkering oil from a wharf in the

1. *Overseas Tankship (UK) Ltd. v. Morts Dock and Engineering Co. Ltd.* (1961) AC 388; *Overseas Tankship (UK) Ltd. v. the Miller Steamship Co. Pty Ltd.* (1967) AC 617.

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harbour. As a result of the carelessness of her engineers, a quantity of that oil overflowed from the *Wagon Mound* on to the surface of the water. Some employees of shipbuilders working on a vessel at a nearby wharf were using electric welding equipment. Some cotton waste on a piece of debris floating on the oil underneath the wharf was set on fire by molten metal. As a result of the fire there was damage, both to the wharf, and to some other nearby vessels. In 1961 the Privy Council held that an action by the wharf owner could not succeed. The principal question at issue was remoteness of damage, and the Privy Council overturned earlier authority to the effect that there was liability in tort for all damage which could be shown to be the direct consequence of a negligent act. The trial judge had found that those involved with the *Wagon Mound* could not reasonably be expected to have known that the oil might catch fire, and there was an absence of the necessary foreseeability of harm. On the other hand when, in 1967, the owners of the nearby vessels got their case to the Privy Council, they succeeded in a claim for nuisance. The Privy Council held on the facts that a reasonable man in the position of chief engineer of the *Wagon Mound* would have known that there was a real risk of the oil catching fire. It may not have been very easy to explain the result of the second case to the unsuccessful plaintiff in the first, but what is relevant for present purposes, is that, in the litigation arising out of that incident, which happened not far from here, a good deal of important law on the subjects of negligence and nuisance was made, and that law had application extending far beyond the field of maritime law.

In May 1970 a vessel named the *New York Star* arrived at Sydney carrying, amongst other things, a quantity of razor blades which were discharged from the ship and placed by the stevedores in a shed on the wharf. The wharf in question is about a mile from here. As a result of the negligence of the stevedores, the razor blades were stolen, and the consignee brought an action for damages. The stevedores, of course, were not parties to the Bill of Lading, but the Bill of Lading contained a Himalaya clause extending the benefit of defences and immunities to independent contractors employed by the carrier. The case² went to the Supreme Court of New South Wales, the Court of Appeal of New South Wales, the High Court of Australia, and ultimately, the Privy Council. In the High Court, where Sir Garfield Barwick was the sole dissident, the majority held that the stevedores could not rely upon the Bill of Lading because of the doctrine of privity of contract. That decision was overturned by the Privy Council, which held that the doctrine did not prevent the stevedores from relying on the immunity.

The next matter to which I refer will be of considerable interest to those looking at the question of assessment of damages for oil pollution.

Immediately to the south of Sydney Harbour is Botany Bay. Most of

2. *Port Jackson Stevedoring Pty Ltd. v. Salmond & Spraggon (Aust) Pty Ltd.* (1980) 144 CLR 301.

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you, when you flew into Sydney, would have landed on a runway extending into Botany Bay. On the shores of Botany Bay, at Kurnell, there is an oil refinery operated by a member of the Caltex group of companies. Beneath Botany Bay there is an oil pipeline which serves the refinery. Botany Bay is constantly being dredged. In October 1971 the dredge *Willemstad* fractured the oil pipeline. The pipeline, and the oil in it, belonged to one member of the Caltex group of companies, but the refinery was operated by another member. The case³ gave rise to the question whether the company which owned the refinery could recover damages for economic loss it suffered as a result of the damage to the pipeline. Because the ownership of the pipeline, and the oil in it, was in another company, this was what is sometimes described as purely economic loss.

In 1981 an event occurred which gave the Privy Council an opportunity to express its disagreement with the decision of the High Court in the *Caltex* case. In July 1981 two ships collided off Port Kembla which is south of Botany Bay. The collision was the fault of one of the vessels named the *Mineral Transporter*. An action for damages was brought by the time charterer of the other vessel. The judge in Admiralty in the Supreme Court of New South Wales, Mr. Justice Yeldham, relying on the decision of the High Court in the *Caltex* case, held that the time charterer was entitled to recover damages for economic loss in the form of wasted hire and loss of profits during the period when the vessel was not operational. The owners of the *Mineral Transporter* appealed direct to the Privy Council from the decision of Mr. Justice Yeldham, and the Privy Council⁴ overruled the decision at first instance, expressing strong disagreement with the decision of the High Court in the *Caltex* case.

As it happened, I had a personal interest in some of these events. I had the pleasure of appearing, briefed by Stuart Hetherington's firm, for the successful appellant in the case about the razor blades, the *New York Star*. On the other hand, I had the somewhat bruising experience of appearing for the unsuccessful respondent in the case concerning the *Mineral Transporter*.

Life, however, has its small compensations. In October 1984 a dredge owned by the very same dredging company, whilst operating in Botany Bay, fractured the very same pipeline, and caused the very same kind of loss to the owners of the Kurnell Oil Refinery. When the action came on before Mr. Justice Yeldham in the Supreme Court, I was briefed to appear for the plaintiff. Something else of importance had happened in the meantime. Appeals to the Privy Council had been abolished. There had been a lot of argument in the Privy Council about what was the true ratio of the decision of the High Court in the *Caltex* case, and my opponents there had great fun in pointing to the different and somewhat conflicting reasons in the opinions of the various justices. However, the wheel turned. There was a certain grim pleasure in pointing out that, whatever

3. *Caltex Oil (Aust) Pty Ltd. v. the Dredge Willemstad* (1977) 136 CLR 529.

4. *Candlewood Navigation Corp. Ltd. v. Mitsui OSK Lines Ltd.* [1986] AC 1.

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differences there might have been in the reasoning, there was a decision of the High Court, now the ultimate court of appeal, which held that this particular defendant owed a duty of care to this particular plaintiff, which could recover this particular kind of damage for negligent interference with that particular pipeline. Mr. Justice Yeldham had no difficulty in accepting that argument.⁵ To return to where I began in this brief review of local maritime litigation, I should add that we did not have much difficulty on the issue of foreseeability, either.

So, even if we cannot claim that this is where it all happens, from time to time we have, here, some very interesting maritime incidents which make important law. Whether it is good law or bad law is the sort of thing that conferences like this can discuss at leisure.

The work you have set yourselves for the next week is important and interesting work. I hope it is successful. I hope, also, that you will take full advantage of such opportunities for entertainment and sightseeing as are available to you. We are proud of our city and, for people interested in maritime subjects, we have a unique environment in which to consider them.

If any of you should be interested in seeing something of the work of the Supreme Court, we have a Public Information Officer, Mrs. Jan Nelson, who will be delighted to show you around.

I am delighted to declare your conference open.

5. *Dredge W.H. Goomai v. Australian Oil Refining Pty Ltd.* (1989) 94 FLR 298.

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Statement by Mr. G. Librando
Observer from the International Maritime Organization (IMO)

Mr. President, Mr Secretary-General, Excellencies, Distinguished Delegates, Ladies and Gentlemen.

May I first express my sincere appreciation for the invitation to the International Maritime Organization to attend this Conference, and for giving me the opportunity to make a brief general statement.

It is with great pleasure that I extend to you the greetings and best wishes of the International Maritime Organisation and its 149 Member States. The Secretary-General, Mr. O'Neil, regrets that prior commitments at this time have prevented him from being with you in person on this important occasion. Moreover, the convening of the seventy-first session of the Legal Committee next week in London has prevented the IMO delegation from being more numerous and representative.

I was, however, requested to attend as the IMO representative and to convey to you and all the participants best wishes for a successful Conference. I would like to take the opportunity to reiterate the continuing support of the International Maritime Organization for the very well-known worthy efforts of the Comité Maritime International to encourage and stimulate discussions at both national and international levels, in order to find solutions which are acceptable not only to Administrations, but also to the maritime industry as a whole.

As the only agency of the United Nations system with an exclusive maritime mandate, the International Maritime Organization has a particular interest in relation to the Comité Maritime International. The CMI has always played a very important role in the work of the Organization, in particular, the Legal Committee, and we look forward to continue and even enhance the collaboration with the CMI.

Let me just recall that the revision of the draft convention on offshore mobile craft adopted by the CMI in 1977 has been carried out at the request of IMO, and that the Legal Committee can be expected to consider this subject at its first session in Spring 1995. Two more items in the Business Programme of this Conference are of particular interest to IMO, since they directly relate to Conventions adopted under the auspices of IMO: these are the assessment of claims for pollution damage, and third party liability.

Next week IMO's Legal Committee is going to discuss, amongst other matters, the application of the Civil Liability Convention in cases of bareboat charter, a question initially raised by Professor Berlingieri. The discussions on this subject will be based on a comprehensive review undertaken by the CMI.

Finally, let me express my warm congratulations for the excellent work of the International Working Groups set up by the CMI for the preparation of this Conference. The documents before us provide a sound basis for our discussions and deliberations. I am, therefore, convinced that this Conference will be crowned with success. Once again, Mr. President, I wish the Conference all success in its undertakings.

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**Statement by Ms. Mahin Faghfourii
Observer from the United Nations Conference
on Trade and Development (UNCTAD)**

Mr. President, distinguished delegations, on behalf of the Deputy Secretary-General, Officer-in-Charge of UNCTAD, I wish to express appreciation for the invitation to attend this very important Conference. The conference will consider and decide upon issues which are of crucial value to the shipping community. UNCTAD has a particular interest in the subject of general average and the revision of the York-Antwerp Rules. UNCTAD's involvement with general average goes back to 1969 when the subject was included in the work programme of the Working Group on International Shipping Legislation. The work on general average only began in 1991 with the preparation of a preliminary report followed by a further study at the request of the Working Group. The latter study, entitled "The Place of General Average in Marine Insurance Today" dated 8th March 1994, is circulated to delegates of this Conference.

During the preparation of our reports and indeed during the preparatory work of the revision of the York-Antwerp Rules within CMI, close co-operation has been maintained between the UNCTAD Secretariat and CMI, especially with Mr. David Taylor, the Chairman of the International Committee, to whom I wish to express my sincere appreciation.

Mr. President, the current revision of the York-Antwerp Rules is characterized by excellent co-operation and contributions from interested organizations, namely CMI, IUMI, AIDE and UNCTAD. Independent research and studies prepared by UNCTAD and IUMI focus on setting out circumstances in which general average presently operates. They attempt to identify critical aspects of the general average system. It is sincerely hoped that this Conference will take account of all current research and studies and produce results acceptable in the present political and commercial environment. The reform of the general average system will of course need to be continued after this Conference within other organizations and industries concerned, including the insurance industry. This is indeed essential in order to achieve a meaningful reform of the system.

Mr. President, the Services Committee of UNCTAD, which met in July this year, has requested us to inform the Committee of developments taking place in general average within CMI and IUMI. We shall report on the outcome of this Conference to the Committee, which is scheduled to meet in July 1995.

Mr. President, co-operation between UNCTAD and CMI goes beyond general average. The Draft Revision of the International Convention on Maritime Liens and Mortgages adopted at the Lisbon Conference, was considered by the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects in the preparation of the Draft International Convention on Maritime Liens and Mortgages, which was adopted by the UN/IMO Conference of Plenipotentiaries in May 1993. The Convention is presently signed by 11 States. Similarly, the Lisbon Draft Revision of the International Con-

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vention on Arrest of Ships will be submitted to the joint IMO/UNCTAD Intergovernmental Group of Experts which is scheduled to be held in Geneva from 5 to 9 December 1994.

Mr. President, we feel co-operation and co-ordination with international organizations such as CMI and the industry as a whole is essential if we are to produce results which will promote efficiency of maritime trade.

In conclusion, I would like to thank you again for the opportunity of making these remarks. I wish the Conference every success in its deliberations.

Part II - The Work of the CMI

**Statement by Mr. M. Jacobsson
Director of the International Oil Pollution Compensation Fund**

Mr. President, Mr. Secretary-General, Distinguished Delegates, Ladies and Gentlemen

On behalf of the International Oil Pollution Compensation Fund (IOPC Fund), I would like to express the Organization's gratitude for having been invited to participate as an observer at the 35th Conference of the Comité Maritime International in Sydney.

The IOPC Fund has always appreciated the relationship with the CMI, which has observer status with the Fund, and the CMI has over the years made valuable contributions to the IOPC Fund's work.

This Conference deals with one subject which is of particular interest to the IOPC Fund, i.e. Draft Guidelines on Admissibility and Assessment of Claims for Oil Pollution Damage. The subject of oil pollution is not new to the CMI. As we all know, the CMI took a very active part in the elaboration of the 1969 Civil Liability Convention.

The IOPC Fund has over the years gained considerable experience as regards the interpretation and application of the 1969 Civil Liability Convention and the 1971 Fund Convention. In the context of some 70 incidents the Fund has also had to deal with the admissibility of claims for compensation for pollution damage. Admittedly, this task has become more difficult in the last few years, since significant claims of new types have been presented, and for very high amounts, in particular as regards so called pure economic loss. For this reason, the IOPC Fund established a Working Group with the mandate to study the criteria for admissibility of claims for compensation within the framework of the Civil Liability Convention and the Fund Convention. The Report of the Working Group will be examined by the IOPC Fund Assembly during the week of 17th October 1994.

I would like to take this opportunity of expressing the IOPC Fund's gratitude for the CMI's participation as observer in the Working Group and for the CMI's valuable contribution.

The IOPC Fund Working Group took note of the work carried out within the CMI. The Working Group discussed the relationship between the criteria for the admissibility of claims developed by the IOPC Fund and the criteria set out in the draft CMI Guidelines. It was emphasized that the CMI was a private organization and that any guidelines or other document adopted by the CMI would not have any legal status.

The Working Group pointed out that if the CMI Guidelines were to be at variance with the criteria laid down by the IOPC Fund through its Assembly and Executive Committee, this would contribute to an increased uncertainty as to the status of law in this field. For this reason, it was emphasized that it was important that the CMI Guidelines were brought as closely as possible in line with the criteria applied by the IOPC Fund.

In accordance with the Working Group's proposal, I have held discussions with the representatives of the CMI during the summer of 1994

Opening of the 35th International Conference

on the problems which would arise if the CMI Guidelines were to be at variance with the criteria adopted by the IOPC Fund, in order to find ways of eliminating any differences. I have today received a document (Sydney I) containing proposals for amendments to the draft Guidelines based on these discussions. Although I have not been able to study this new document in detail, it appears to be a great improvement from the IOPC Fund's point of view. With the risk of being repetitive, I would like to emphasize to the CMI Conference the importance of any guidelines adopted by the CMI not deviating from the criteria developed by the IOPC Fund.

May I conclude by saying that the IOPC Fund looks forward to future co-operation with the CMI. I wish the CMI every success with the Sydney Conference.

AGENDA OF THE CONFERENCE

- 1. Review of the law of General Average and York-Antwerp Rules 1974**
- 2. Off-Shore Mobile Craft**
- 3. Assessment of Claims for Pollution Damage**

SPECIAL SESSIONS

- 4. Working Group on Third Party Liability**
- 5. Working Group on Classification Societies**
- 6. Seminar on Marine Insurance**

ORDRE DU JOUR DE LA CONFERENCE

- 1. Révision de la loi sur l'Avarie Commune et les Règles d'York et d'Anvers 1974**
- 2. Engins Mobiles d'Exploitation des Fonds Marins**
- 3. Règles de Conduite sur les Dommages de Pollution par Hydrocarbures**

SESSIONS SPÉCIALES

- 4. Group de Travail sur la Responsabilité Civile**
- 5. Group de Travail sur les Sociétés de Classification**
- 6. Séminaire sur l'Assurance Maritime**

YORK-ANTWERP RULES 1994

REGLES DE YORK ET D'ANVERS 1994

YORK-ANTWERP RULES 1994 ADOPTED AT SYDNEY 7 OCTOBER 1994

Final Report of the Chairman of the International Sub-Committee

At a plenary session of the CMI conference in Sydney on 7 October 1994, the text of the York-Antwerp Rules which follows was unanimously adopted by the 36 Member Associations attending and voting. The resolution, which appears as Appendix B to this report, recommended that the York-Antwerp Rules 1994 should be applied in the adjustment of claims in general average as soon as practicable after the 31 December 1994.

The work of the International Sub-Committee which presented the adopted text to the plenary session began in December 1990 when the Executive Council of CMI resolved "to carry out a study of the law of general average and of the York-Antwerp Rules and submit any recommendations it might deem appropriate on the status of such law and on the possible need for an updating or a revision of the York-Antwerp Rules 1974 (as amended 1990)".

Mr. David W. Taylor was appointed Chairman of the International Sub-Committee.

In the interval from December 1990 to October 1994 the International Sub-Committee in addition to carrying out its own detailed work co-operated very closely with AIDE which was at the same time carrying out a review of general average and the York-Antwerp Rules. The work of AIDE concluded in Prague in September 1993 when the general assembly of AIDE adopted the report of its International Sub-Committee.

At the same time UNCTAD was addressing the topic of general average. The UNCTAD Secretariat had produced a preliminary review of general average which was published in November 1991. This review was considered by the working group on International Shipping Legislation in Geneva in November 1991 when it resolved "to request the UNCTAD Secretariat to approach, in close consultation with CMI, the insurance industry (including IUMI), the international organisations representing commercial parties involved with general average to study the extent to which insurance arrangements could simplify the general average system".

Moreover IUMI was itself considering the position of the insurance industry in relation to the general average regime. In its turn, IUMI produced an extensive report which was considered at the IUMI Assembly (Toronto) in September 1994.

It is therefore evident that the work of the CMI International Sub-Committee in Sydney had had the benefit of those three contemporaneous studies. In addition the Chairman of the CMI International Sub-

REGLES D'YORK ET D'ANVERS 1994 ADOPTÉES A SYDNEY LE 7 OCTOBRE 1994

Rapport final du Président de la Sous-Sommission Internationale *

A la séance plénière de la Conférence de Sydney du 7 octobre 1994 le texte des Règles d'York et d'Anvers qui suit a été adopté à l'unanimité par les 36 nations qui ont participé au vote. La résolution qui suit comme Appendice B de ce rapport a recommandé que les Règles d'York et d'Anvers 1994 soient appliquées aux règlements des réclamations aussitôt que possible après le 31 décembre 1994.

Le travail de la Sous-Commission Internationale qui a présenté le texte adopté par la session plénière en décembre 1990 quand le Conseil Exécutif du CMI a décidé de "faire une étude sur l'avarie commune et les Règles d'York et d'Anvers et de soumettre toute recommandations qui pourra être jugée opportune au sujet de la loi sur l'avarie commune et sur le besoin d'une mise au point ou d'une révision des Règles d'York et d'Anvers 1974 (amendées en 1990)".

M. David Taylor a été élu Président.

Dans l'intervalle entre le décembre 1990 et l'octobre 1994 la Sous-Commission Internationale a non seulement fait son travail, mais aussi a coopéré très étroitement avec l'AIDE qui en même temps procédait à une révision de l'avarie commune et des Règles d'York et d'Anvers. Le travail de l'AIDE a été complété à Paris en septembre 1993 avec l'adoption par l'Assemblée Générale du rapport de sa Sous-Commission Internationale.

En même temps la CNUCED aussi s'est occupée de l'avarie commune. Le Secrétariat a rédigé une étude préliminaire publiée en novembre 1991. Cette étude a été prise en considération par le groupe de travail sur la Législation Internationale Maritime à Genève en novembre 1991. Ce groupe de travail a décidé de demander au Secrétariat de la CNUCED de prendre contact, en consultation étroite avec le CMI, avec l'industrie de l'assurance (y inclus l'IUMI), les organisations internationales représentant les parties commerciales intéressées à l'avarie commune, et d'étudier dans quelle mesure l'assurance pourrait simplifier le système de l'avarie commune.

Par surcroît l'IUMI elle même était en train de considérer la position de l'industrie de l'assurance envers l'avarie commune. L'IUMI a produit un rapport détaillé qui a été pris en considération par l'assemblée de l'IUMI à Toronto en septembre 1994.

* Traduction établie par l'Association Française du Droit Maritime.

Part II - The Work of the CMI

Committee and his rapporteur, Mr Bent Nielsen were able to attend the detailed meetings of AIDE and to participate in the UNCTAD considerations at the same time as co-operating with IUMI in its deliberations. Furthermore, representatives of UNCTAD and IUMI participated in the meetings of the CMI Sub-Committee. At the Sydney Conference itself there was active participation from BIMCO, the International Group of P&I Clubs, AIDE, the International Chamber of Shipping, IUMI, UNCTAD and others. Accordingly, the CMI review was carried out at a time and in a manner which ensured wide participation among interested bodies and derived much from the contemporaneous serious studies of AIDE and IUMI.

As the Chairman of the International Sub-Committee remarked in his address to the opening session of CMI at Sydney, the present work was characterised by this extensive co-operation. He also emphasised another particular feature namely the gathering by both AIDE and IUMI and UNCTAD of statistical data in an effort to better understand the current financial impact of general average.

In the course of the work of the CMI International Sub-Committee it became evident that there was a wide resistance to any tendency to expand the scope of general average. Additionally, the treatment of pollution liabilities and pollution expenditure was appropriately the subject of intense discussion and special reports.

The theme, which has been the theme of all recent periodical reviews of the York-Antwerp Rules, has been to take the opportunity of the review to seek to simplify general average procedures, to clarify doubtful issues with a common goal of trying to ensure that the general average regime continues realistically to respond to the shipping, insurance, financial, trading and environmental techniques of the 1990's.

David W. Taylor
Chairman
International Sub-Committee

York-Antwerp Rules 1994

Il est partant évident que le travail de la Sous-Commission Internationale du CMI à Sydney a eu le bénéfice de ces trois études contemporaines.

Le Président de la Sous-Commission Internationale du CMI et son rapporteur, M. Bent Nielsen, ont aussi pu participer aux réunions de l'AIDE et aux études de la CNUCED. Au même temps ils ont pu coopérer avec IUMI dans ses délibérations.

Les représentants de la CNUCED et de l'IUMI ont participé aux réunions de la Sous-Commission du CMI. Au cours de la Conférence de Sydney il y a eu une participation active du BIMCO, de l'International Group of P & I Clubs, de l'AIDE, de l'International Chamber of Shipping, de l'IUMI, de la CNUCED et d'autres organisations.

La révision du CMI a par conséquent été faite d'une manière propre à assurer une large participation des organisations intéressées et a eu le bénéfice des études contemporaines de l'AIDE et de l'IUMI.

Ainsi que le Président de la Sous-Commission Internationale l'a remarqué dans son adresse lors de la session d'ouverture de la Conférence du CMI à Sydney, le travail du CMI a été caractérisé par cette large coopération. Le Président de la Sous-Commission Internationale a aussi souligné un autre aspect particulier du travail, notamment le recueil par AIDE, IUMI et CNUCED de données statistiques dans l'effort de mieux comprendre l'influence financière de l'avarie commune dans le présent.

Dans le cours du travail de la Sous-Commission Internationale du CMI il a paru évident qu'il y avait une résistance considérable à toute tendance internationale d'élargir le domaine de l'avarie commune.

En outre le traitement de la responsabilité pour pollution et du problème des dépenses encourues a été l'objet d'approfondissements considérables et des plusieurs rapports. Le but de l'étude du CMI, qui avait été aussi le but des révisions périodiques précédentes des Règles d'York et d'Anvers, a été de saisir cette occasion pour tâcher de simplifier les procédures de l'avarie commune, de clarifier les solutions douteuses pour tâcher d'assurer que le régime de l'avarie commune puisse continuer à répondre d'une manière réaliste aux besoins des techniques de l'armement, de l'assurance, des finances, du commerce et de l'environnement des années 90.

David W. Taylor
Président
de la Sous-Commission Internationale

APPENDIX A

SUMMARY OF THE PRINCIPAL CHANGES INTRODUCED INTO THE 1994 YORK-ANTWERP RULES

RULE PARAMOUNT

A Rule Paramount has been included with the intention of introducing the concept of reasonableness throughout the rules.

LETTERED RULES

Rule A

A second paragraph has been added to Rule A, the wording of which formally appeared in Rule B. In the 1994 text the word "expenditures" has been substituted for the word "expenses".

Rule B - Tug and tow

The space vacated in Rule B by the removal of the former Rule B to Rule A has been filled by a new rule relating to tug and tows or push-boat and barges. The intention in introducing the new Rule is to achieve uniformity.

Rule C

An important new second paragraph was introduced with the purpose of excluding pollution liabilities from General Average. A complementary provision has been introduced into new Rule XI(d) to deal with the cost of measures incurred by the parties to the maritime adventure to prevent or minimise pollution damage when the measures are undertaken as part of the General Average Act.

The third paragraph has been altered to make it clear that loss of market is not to be treated as an indirect loss.

Rule E

A second and third paragraph has been added to provide for notice of claims in general average to be given in writing to the Average Adjuster within twelve months of the end of the voyage and in addition permitting the Average Adjuster to estimate the extent of allowances or contributory values if a party has failed to supply supporting evidence within twelve months of a request from the Average Adjuster. The intention was to seek to reduce delays.

York-Antwerp Rules 1994

APPENDICE A**SOMMAIRE DES MODIFICATIONS PRINCIPALES
INTRODUITES DANS LES REGLES D'YORK ET D'ANVERS 1994 *****REGLE PARAMOUNT**

Une Règle Paramount a été insérée dans le but d'introduire le concept d'action raisonnable dans l'ensemble des règles.

REGLES PRECEDEES DES LETTRES**Règle A**

Un deuxième paragraphe a été ajouté à la Règle A dont le texte se trouvait préalablement à la lettre B. Dans le texte (anglais) de 1994 le mot "expenses" a été substitué au mot "expenditures" (la version française n'a pas été modifiée).

Règle B - Remorquage et poussage

L'espace rendu libre dans la Règle B par le passage du texte de cette Règle à la Règle A a été rempli par une nouvelle règle relative aux remorqueur et remorqué ou aux pousseur et chalands. L'intention poursuivie avec l'introduction de cette nouvelle règle est celle d'achever l'uniformité.

Règle C

Un nouveau deuxième paragraphe important a été introduit dans le but d'exclure la responsabilité pour pollution de l'avarie commune. Une disposition complémentaire a été introduite dans la nouvelle Règle XI(d) au sujet du coût des mesures adoptées par les parties à une aventure maritime pour prévenir ou limiter les dommages dus à la pollution quand les mesures ont été adoptées comme partie d'un acte d'avarie commune.

Le troisième paragraphe a été modifié pour préciser que la perte de marché ne doit pas être traitée comme une perte indirecte.

Règle E

Un deuxième et troisième paragraphe ont été ajoutés pour prévoir que les réclamations au titre de l'avarie commune doivent être notifiées par écrit au dispatcheur dans les douze mois de la date dans laquelle à pris fin le voyage et aussi pour permettre au dispatcheur d'estimer le montant des admissions ou des valeurs contributives si une partie a omis de fournir les justificatifs de sa réclamation dans les douze mois de la requête du dispatcheur. L'intention a été de tenter de réduire les retards.

* Traduction établie par l'Association Française du Droit Maritime.

Part II - The Work of the CMI

Rule F

Replacing the word “extra” by the word “additional” is an amendment only to achieve consistency between the French and English texts.

Rule G

Two new paragraphs have been added by which the wording of a non-separation agreement has been included. The wording of the second paragraph is derived from the Bigham Clause.

NUMBERED RULES**Rule II**

The opening sentence of Rule II has been amended so as to substitute the words “loss of or damage to the property involved in the common maritime adventure” for the words “damage done to a ship and cargo or either of them”. In addition to introducing loss as well as damage, the amendment was intended to ensure that allowances for pollution liability were excluded by making it necessary for such loss or damage to have been suffered by the property involved in the common maritime adventure.

Rule III

The words at the end of the Rule “or heat however caused” have been substituted by the words “or by heat of the fire”. The intention of the amendment was to ensure that only damage caused by “heat of the fire” should be excluded. Losses caused by heat if a direct consequence of extinguishing measures will be allowable.

Rule V

The amendment to add, after the words “loss or damage”, the words “to the property involved in the common maritime adventure” was a further amendment to be sure that all allowances for pollution liabilities were excluded.

Rule VIII

The amendment which makes reference to the property involved in the common maritime adventure is a further amendment to ensure that allowances for pollution liabilities are excluded.

Rule IX

The rule was amended to make it no longer necessary to establish the adequacy of the supply of fuel for the voyage. The amendment also provides that a credit will only be made when ships’ materials and stores are used as fuel.

York-Antwerp Rules 1994

Règle F

Le remplacement (dans le texte anglais) du mot “extra” par le mot “additional” est une modification faite dans le seul but de réaliser une meilleure uniformité entre le texte français et le texte anglais.

Règle G

Deux nouveaux paragraphes ont été ajoutés dans le but d’insérer dans les règles le texte d’un accord de non-séparation. La formulation du deuxième paragraphe est basée sur la “Bigham Clause”.

REGLES NUMEROTEES**Règle II**

La phrase initiale de la Règle II a été amendée de façon à substituer les mots “la perte ou le dommage causé au propriétés engagées dans l’aventure maritime commune”, aux mots “le dommage causé au navire et à la cargaison, ou à l’un d’eux”. L’amendement a eu le but non seulement d’introduire la référence à la perte aussi bien qu’au dommage mais aussi d’assurer l’exclusion de la responsabilité pour pollution. Ce résultat a été obtenu en exigeant que la perte ou le dommage aient été subis par les propriétés engagées dans l’aventure maritime commune.

Règle III

Les mots à la fin de cette règle “ou la chaleur quelle qu’en soit la cause” ont été remplacés par les mots “ou par la chaleur de l’incendie”. Le but de cette amendement a été d’assurer que seul le dommage causé par “la chaleur de l’incendie” soit exclu. Les pertes causées par la chaleur seront admises si elles sont une conséquence directe des mesures pour éteindre l’incendie.

Règle V

Aux mots “perte ou dommage” les mots “subis par les propriétés engagées dans l’aventure maritime commune” ont été ajoutés dans le but d’assurer que toute admission pour responsabilité due à la pollution soit exclue.

Règle VIII

La référence aux propriétés engagées dans l’aventure maritime commune constitue un amendement ultérieur dans le but d’assurer l’exclusion de toute responsabilité pour pollution.

Règle IX

Cette règle a été amendée pour éliminer la condition que le navire ait été pourvu d’un approvisionnement suffisant en combustible. L’amendement prévoit aussi que l’admission en avarie commune est conditionnée au fait que les approvisionnements du navire aient été utilisés comme combustible.

Part II - The Work of the CMI

Rule X

Two superfluous commas were removed from Rule X(a). The amendment to Rule X(c), namely the addition of a second sentence is intended as a clarification.

Rule XI

The sequence of paragraphs in Rule XI was altered to achieve a greater logic.

The amendment which adds the reference to port charges makes it clear that port charges as well as wages and fuel are also excluded.

Rule XI(d) in the 1974 Rules has been rescinded. In its place is an important new Rule XI(d)(i)(ii)(iii) and (iv). This is the complementary pollution provision to the provision which appears in Rule C. The intention is to specify the circumstances in which allowances might be made in general average for the cost of measures undertaken to prevent or minimise damage to the environment.

Rule XII

The deletion of the words "caused in the act" and the substitution by the words "sustained in consequence (of) their....." is intended to be a clarification of existing practice whereby loss or damage to cargo caused as a direct or foreseeable consequence of its discharge at port of refuge, with inadequate facilities, is allowed in General Average.

Rule XVII

The amendments to the second paragraph and the reference to Article 14 of the International Convention on Salvage 1989 corrects an oversight which occurred when the amendment of Rule VI was considered in 1990. Without the amendments special compensation under Article XIV of the 1989 Salvage Convention would probably have been regarded as an extra charge and therefore required to be deducted from the ship's sound value to obtain a contributory value.

There is a significant amendment to the last paragraph of this rule as a result of which mails and private motor vehicles which are accompanied by passengers, are excluded from contributing in general average.

Rule XX

The amendments to this rule are merely simplifications and improvements of the layout of the rule and modernisation of the language.

Rule XXI

The amendments provide that interest will continue to run at 7% per annum for three months after the date of the general average adjustment.

York-Antwerp Rules 1994

Règle X

Dans la Règle X(a) les deux virgules figurant dans le texte de 1974 ont été supprimées. L'amendement de la Règle X(c) constitué par le nouveau paragraphe qui a été ajouté à cette règle, a un but de clarification.

Règle XI

L'ordre des paragraphes de la Règle XI a été modifié pour rendre la succession des paragraphes plus logique.

La référence aux frais de port établit clairement que les frais de port ainsi que les salaires et le combustible sont exclus.

La Règle XI(d) des Règles de 1974 a été supprimée. Sa place a été prise par une nouvelle Règle XI(d) (i) (ii) (iii) et (iv) d'importance considérable. Cette règle constitue une disposition au sujet de la pollution qui est complémentaire à celle de la Règle C. Son but est de spécifier les circonstances dans lesquelles l'admission en avarie commune du coût des mesures pour prévenir ou limiter les dommages à l'environnement est admissible.

Règle XII

La suppression dans le texte anglais des mots "caused in the act" et leur substitution par les mots "sustained in consequence (of) their ..." a le but de clarifier l'usage d'après lequel les dommages ou la perte subis par la cargaison à la suite d'une conséquence directe et prévisible de son déchargement au port de refuge où les moyens de réparation sont inadéquats est admissible en avarie commune.

Règle XVII

La modification du deuxième paragraphe et la référence à l'art. 14 de la Convention Internationale sur l'Assistance de 1989 ont été adoptées dans le but de corriger une méprise qui a eu lieu quand l'amendement de la Règle VI a été considéré en 1990. Sans ces amendements l'indemnité spéciale de l'art. 14 de la Convention sur l'Assistance de 1989 aurait probablement dû être considérée comme une charge affectant le navire, qui par conséquent aurait dû être déduite de la valeur du navire à l'état sain pour obtenir la valeur contributive.

Un amendement important a été inséré dans le dernier paragraphe de cette règle qui a pour effet d'exclure l'obligation de contribution en avarie commune pour le courrier et les véhicules à moteur privés et accompagnés.

Règle XX

Les amendements à cette règle ont seulement pour but de simplifier et d'améliorer la rédaction et de moderniser le texte.

Règle XXI

Les amendements à cette règle prévoient que les intérêts continuent à courir au taux du 7% par an jusqu'à l'expiration du délai de trois mois à compter de la date du règlement d'avarie commune.

APPENDIX B**RESOLUTION UNANIMOUSLY APPROVED BY THE SYDNEY CONFERENCE:**

The Maritime Association of Australia and New Zealand as the host Association proposes with pleasure that the delegates representing the National Associations of Maritime Law of the States listed hereunder:

- 1. Having noted with approval the amendments which have been made to the York-Antwerp Rules, 1974, as amended 1990.*
- 2. Propose that the new text be referred to as the York-Antwerp Rules, 1994.*
- 3. Recommend that the York-Antwerp Rules, 1994 should be applied in the adjustment of claims in General Average as soon as practicable after 31st December 1994.*

Argentina	Greece	Perù
Australia and New Zealand	Hong Kong	Philippines
Belgium	Ireland	Poland
Brazil	Italy	Portugal
Canada	Japan	Russian Federation
Chile	Korea	Singapore
China	Malaysia	South Africa
Colombia	Morocco	Spain
Croatia	Mexico	Sweden
Denmark	Netherlands	Switzerland
Finland	Nigeria	United Kingdom
France	Norway	U.S.A.
Germany	Panama	Venezuela

*York-Antwerp Rules 1994***APPENDICE B *****RESOLUTION APPROUVEE A L'UNANIMITE PAR LA
CONFERENCE DE SYDNEY**

L'Association Australienne et Néo-Zelandaise de Droit Maritime, en sa qualité d'association organisatrice de la Conférence a le plaisir de proposer que les délégués représentants des Associations Nationales de Droit Maritime des Etats énumérés cidessous.

- 1. Ayant approuvé les Amendements qui ont été apportés aux Règles d'York et d'Anvers 1974 amendées en 1990.*
- 2. Proposent que le nouveau texte ait pour titre les "Règles d'York et d'Anvers 1974".*
- 3. Recommandent que les Règles d'York et d'Anvers 1994 soient appliquées dans le règlement des avaries communes dès que possible à partir du 31 Décembre 1994.*

Afrique du Sud	Espagne	Nigérie
Allemagne	Etats-Unis	Norvège
Argentine	Fédération Russe	Panama
Australie & Nouvelle Zélande	Finlande	Pays-Bas
Belgique	France	Pérou
Brésil	Grèce	Philippines
Canada	Hong Kong	Pologne
Chili	Irlande	Portugal
Chine	Italie	Royaume-Uni
Colombie	Japon	Singapour
Corée	Malaisie	Suède
Croatie	Maroc	Suisse
Danemark	Mexique	Venezuela

* Version française établie par l'Association Française du Droit Maritime.

APPENDIX C

YORK-ANTWERP RULES 1994

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

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.

General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.

Rule B

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.

A vessel is not in common peril with another vessel or vessels if by simply disconnecting from the other vessel or vessels she is in safety; but if the disconnection is itself a general average act the common maritime adventure continues.

Rule C

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

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.

Demurrage, loss of market, and any loss or damage sustained or ex-

APPENDIX C

REGLES D'YORK ET D'ANVERS 1994 *

RÈGLE D'INTERPRETATION

Dans le règlement d'avaries communes, les Règles suivantes doivent s'appliquer à l'exclusion de toute loi et pratique incompatibles avec elles.

A l'exception de ce qui est prévu par la Règle "Paramount" et les Règles numérotées, l'avarie commune doit être réglée conformément aux Règles précédées de lettres.

RÈGLE "PARAMOUNT"

Une admission en avarie commune ne pourra être en aucun cas prononcée pour un sacrifice ou une dépense qui n'aurait pas été raisonnablement consenti.

Règle A

Il y a acte d'avarie commune quand, et seulement quand, intentionnellement et raisonnablement, un sacrifice extraordinaire est fait ou une dépense extraordinaire encourue pour le salut commun, dans le but de préserver d'un péril les propriétés engagées dans une aventure maritime commune.

Les sacrifices et dépenses d'avarie commune seront supportés par les divers intérêts appelés à contribuer sur les bases déterminées ci-après.

Règle B

Il y a aventure maritime commune lorsqu'un ou plusieurs navires remorquent ou poussent un ou plusieurs autres navires, pourvu que tous soient engagés dans des activités commerciales et non dans une opération d'assistance.

Lorsque des mesures seront prises pour préserver les navires et leurs éventuelles cargaisons d'un péril commun, les Règles seront applicables.

Un navire n'est pas en situation de péril commun avec un ou plusieurs autres navires s'il lui suffit de s'en détacher pour se trouver en sécurité; mais si le fait de s'en détacher est lui-même constitutif d'un acte d'avarie commune, l'aventure maritime commune n'est pas pour autant interrompue.

Règle C

Seuls les pertes, dommages ou dépenses qui sont la conséquence directe de l'acte d'avarie commune seront admis en avarie commune.

* Version française établie par l'Association Française du Droit Maritime.

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pense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever, shall not be admitted 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 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

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.

All parties 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 within 12 months of the date of the termination of the common maritime adventure.

Failing such notification, or if within 12 months of a request for the same any of the parties shall fail to supply evidence in support of a notified claim, or particulars of value in respect of a contributory interest, the average adjuster shall be at liberty to estimate the extent of the allowance or the contributory value on the basis of the information available to him, which estimate may be challenged only on the ground that it is manifestly incorrect.

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

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 adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

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

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Une admission en avarie commune ne pourra être en aucun cas prononcée pour des dommages, pertes ou dépenses encourus au titre de dommages à l'environnement ou consécutivement à des fuites ou rejets de substances polluantes émanant des propriétés engagées dans l'aventure maritime commune.

Chômage, différence de cours, et toute perte ou dommage subi ou dépense encourue par suite du retard, soit au cours du voyage, soit postérieurement, de même que toute perte indirecte quelconque, ne seront pas admis en avarie commune.

Règle D

Lorsque l'événement qui a donné lieu au sacrifice ou à la dépense aura été la conséquence d'une faute commise par l'une des parties engagées dans l'aventure, il n'y aura pas moins lieu à contribution, mais sans préjudice des recours ou des défenses pouvant concerner cette partie à raison d'une telle faute.

Règle E

La preuve qu'une perte ou une dépense doit effectivement être admise en avarie commune incombe à celui qui réclame cette admission.

Les parties qui entendent présenter réclamation au titre de l'avarie commune doivent notifier par écrit au dispatcheur, dans les 12 mois de la date à laquelle a pris fin l'aventure maritime commune, la perte ou la dépense pour laquelle elles réclament contribution.

A défaut d'une telle notification, ou encore à défaut, pour l'une quelconque des parties, de fournir dans les 12 mois de la date à laquelle la demande lui en est faite, les justificatifs de sa réclamation ou les précisions relatives à la valeur d'un intérêt appelé à contribuer, le dispatcheur sera autorisé à estimer le montant de l'admission ou de la valeur contributive sur la base des informations dont il dispose, son estimation ne pouvant être dès lors contestée qu'en cas d'erreur manifeste.

Règle F

Toute dépense supplémentaire encourue en substitution d'une autre dépense qui aurait été admissible en avarie commune sera réputée elle-même avarie commune et admise à ce titre, sans égard à l'économie éventuellement réalisée par d'autres intérêts, mais seulement jusqu'à concurrence du montant de la dépense d'avarie commune ainsi évitée.

Règle G

Le règlement des avaries communes doit être établi, tant pour l'estimation des pertes que pour la contribution, sur la base des valeurs au moment et au lieu où se termine l'aventure.

Cette règle est sans influence sur la détermination du lieu où le règlement doit être établi.

Quand un navire se trouve en quelque port ou lieu que ce soit, dans des circonstances qui seraient susceptibles de donner lieu à une admission en avarie commune sur la base des dispositions des Règles X et XI,

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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 adventure had continued in the original ship for so long as justifiable under the contract of affreightment and the applicable law.

The proportion attaching to cargo of the allowances made in general average by reason of applying the third paragraph of this Rule shall not exceed the cost which would have been borne by the owners of cargo if the cargo had been forwarded at their expense.

Rule I. Jettison of Cargo

No jettison of cargo shall be made good 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 made good 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 made good as general average; except that no compensation 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 made good 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 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 adventure in the nature

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et quand la cargaison ou une partie de celle-ci est acheminée à destination par d'autres moyens, les droits et obligations relatifs à l'avarie commune demeureront — sous réserve que les intérêts cargaison en soient autant que faire se peut avisés — aussi proches que possible de ce qu'ils auraient été si, en l'absence d'un tel acheminement, l'aventure s'était poursuivie sur le navire d'origine, et ce aussi longtemps que cela apparaîtra justifié en l'état du contrat et de la loi applicables au transport.

La part des admissions en avarie commune incombant à la cargaison, en application du 3ème paragraphe de la présente règle, ne pourra excéder la dépense qu'auraient supportée les propriétaires de la cargaison si celle-ci avait été acheminée à leurs frais.

Règle I. Jet de cargaison.

Aucun jet de cargaison ne sera admis en avarie commune à moins que cette cargaison n'ait été transportée conformément aux usages reconnus du commerce.

Règle II. Perte ou dommage causé par sacrifices pour le salut commun.

Sera admis en avarie commune la perte ou le dommage causé aux propriétés engagées dans l'aventure maritime commune ou en conséquence d'un sacrifice fait pour le salut commun, et par l'eau qui pénètre dans la cale par les écoutilles ouvertes ou par toute autre ouverture pratiquée en vue d'opérer un jet pour le salut commun.

Règle III. Extinction d'incendie à bord.

Sera admis en avarie commune le dommage causé au navire et à la cargaison, ou à l'un d'eux, par l'eau ou autrement, y compris le dommage causé en submergeant ou en sabordant un navire en feu, en vue d'éteindre un incendie à bord; toutefois, aucune bonification ne sera faite pour dommage causé par la fumée quelle qu'en soit la cause ou par la chaleur de l'incendie.

Règle IV. Coupement de débris.

La perte ou le dommage éprouvé en coupant des débris ou des parties du navire qui ont été enlevés ou sont effectivement perdus par accident, ne sera pas bonifié en avarie commune.

Règle V. Echouement volontaire.

Quand un navire est intentionnellement mis à la côte pour le salut commun, qu'il dût ou non y être drossé, les pertes ou dommages en résultant et subis par les propriétés engagées dans l'aventure maritime commune, seront admis en avarie commune.

Règle VI. Rémunération d'assistance.

(a) Les dépenses encourues par les parties engagées dans l'aventure et ayant le caractère d'assistance, soit en vertu d'un contrat soit au-

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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.

Expenditure allowed in general average shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimising 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.

- (b) Special compensation payable to a salvor by the shipowner under Article 14 of the said Convention to the extent specified in paragraph 4 of that Article or under any other provision similar in substance shall not be allowed in general average.

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 made good 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 admitted 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 admitted 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) 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

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trement, seront admises en avarie commune, pourvu que les opérations d'assistance aient été effectuées dans le but de préserver du péril les propriétés engagées dans l'aventure maritime commune.

Les dépenses admises en avarie commune comprendront toute rémunération d'assistance dans la fixation de laquelle l'habileté et les efforts des assistants pour prévenir ou limiter les dommages à l'environnement, tels qu'ils sont énoncés à l'article 13.1 (b) de la Convention Internationale de 1989 sur l'assistance, ont été pris en compte.

- (b) L'indemnité spéciale payable à l'assistant par l'armateur sous l'empire de l'article 14 de ladite Convention, dans les conditions indiquées par le paragraphe 4 de cet article, ou de toute autre disposition de portée semblable ne sera pas admise en avarie commune.

Règle VII - Dommage aux machines et aux chaudières.

Le dommage causé à toute machine et chaudière d'un navire échoué dans une position périlleuse par les efforts faits pour le renflouer, sera admis en avarie commune, lorsqu'il sera établi qu'il procède de l'intention réelle de renflouer le navire pour le salut commun au risque d'un tel dommage; mais lorsqu'un navire est à flot, aucune perte ou avarie causée par le fonctionnement de l'appareil de propulsion et des chaudières ne sera, en aucune circonstance, admise en avarie commune.

Règle VIII. Dépenses pour alléger un navire échoué et dommage résultant de cette mesure.

Lorsqu'un navire est échoué et que la cargaison, ainsi que le combustible et les approvisionnements du navire, ou l'un d'eux, sont déchargés dans des circonstances telles que cette mesure constitue un acte d'avarie commune, les dépenses supplémentaires d'allègement, de location des allèges, et, le cas échéant, celles de réembarquement ainsi que toute perte ou dommage aux propriétés engagées dans l'aventure maritime commune en résultant, seront admises en avarie commune.

Règle IX. Cargaison, objets du navire et approvisionnements utilisés comme combustibles.

La cargaison, les objets et approvisionnements du navire, ou l'un d'eux, qu'il a été nécessaire d'utiliser comme combustibles pour le salut commun en cas de péril, seront admis en avarie commune, mais lorsque le coût des objets et approvisionnements du navire est ainsi admis, l'avarie commune sera créditée du coût estimatif du combustible qui autrement aurait été consommé pour la poursuite du voyage.

Règle X. Dépenses au port de refuge, etc.

- (a) Quand un navire sera entré dans un port ou lieu de refuge ou qu'il sera retourné à son port ou lieu de chargement par suite d'accident, de sacrifice ou d'autres circonstances extraordinaires qui auront rendu cette mesure nécessaire pour le salut commun, les dé-

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accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, the expenses of entering such port or place shall be admitted 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 admitted as general average.

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 admitted as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

- (b) 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 admitted 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.

The cost of handling on board or discharging cargo, fuel or stores shall not be admissible 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 admissible as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be admitted as general average. The provisions of Rule XI shall be applied to the extra period of detention occasioned by such reloading or restowing.

But when the ship is condemned or does not proceed on her original voyage, storage expenses shall be admitted 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.

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penses encourues pour entrer dans ce port ou lieu seront admises en avarie commune; et, quand il en sera reparti avec tout ou partie de sa cargaison primitive, les dépenses correspondantes pour quitter ce port ou lieu qui auront été la conséquence de cette entrée ou de ce retour seront de même admises en avarie commune. Quand un navire est dans un port ou lieu de refuge quelconque et qu'il est nécessairement déplacé vers un autre port ou lieu parce que les réparations ne peuvent être effectuées au premier port ou lieu, les dispositions de cette Règle s'appliqueront au deuxième port ou lieu, comme s'il était un port ou lieu de refuge, et le coût du déplacement, y compris les réparations provisoires et le remorquage, sera admis en avarie commune.

Les dispositions de la Règle XI s'appliqueront à la prolongation du voyage occasionnée par ce déplacement.

- (b) Les frais pour manutentionner à bord ou pour décharger la cargaison, le combustible ou les approvisionnements, soit à un port, soit à un lieu de chargement, d'escale ou de refuge, seront admis en avarie commune si la manutention ou le déchargement était nécessaire pour le salut commun ou pour permettre de réparer les avaries au navire causées par sacrifice ou par accident si ces réparations étaient nécessaires pour permettre de continuer le voyage en sécurité, excepté si les avaries au navire sont découvertes dans un port ou lieu de chargement ou d'escale sans qu'aucun accident ou autre circonstance extraordinaire en rapport avec ces avaries ne se soit produit au cours du voyage.

Les frais pour manutentionner à bord ou pour décharger la cargaison, le combustible ou les approvisionnements ne seront pas admis en avarie commune s'ils ont été encourus à seule fin de remédier à un désarrimage survenu au cours du voyage, à moins qu'une telle mesure soit nécessaire pour le salut commun.

- (c) Toutes les fois que les frais de manutention ou de déchargement de la cargaison, du combustible ou des approvisionnements seront admissibles en avarie commune, les frais de leur magasinage, y compris l'assurance si elle a été raisonnablement conclue, de leur rechargement et de leur arrimage seront également admis en avarie commune. Les dispositions de la Règle XI s'appliqueront à la période supplémentaire d'immobilisation occasionnée par ce rechargement ou ce réarrimage.

Mais si le navire est condamné ou ne continue pas son voyage primitif, les frais de magasinage ne seront admis en avarie commune que jusqu'à la date de condamnation du navire ou de l'abandon du voyage ou bien jusqu'à la date de l'achèvement du déchargement de la cargaison en cas de condamnation du navire ou d'abandon du voyage avant cette date.

Règle XI. Salaires et entretien de l'équipage et autres dépenses pour se rendre au port de refuge, et dans ce port, etc.

- (a) Les salaires et frais d'entretien du capitaine, des officiers et de l'é-

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Rule XI. Wages and Maintenance of Crew and Other Expenses Bearing up for and in 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 admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).
- (b) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that 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 admitted in general average.

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

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

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 admissible as general average, even if the repairs are necessary for the safe prosecution of the voyage.

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 admitted 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) For the purpose of this and the other 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 or articles of employment.

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quipage raisonnablement encourus ainsi que le combustible et les approvisionnements consommés durant la prolongation du voyage occasionnée par l'entrée du navire dans un port de refuge, ou par son retour au port ou lieu de chargement, doivent être admis en avarie commune quand les dépenses pour entrer en ce port ou lieu sont admissibles en avarie commune par application de la Règle X (a).

- (b) Quand un navire sera entré ou aura été retenu dans un port ou lieu par suite d'un accident, sacrifice ou autres circonstances extraordinaires qui ont rendu cela nécessaire pour le salut commun, ou pour permettre la réparation des avaries causées au navire par sacrifice ou accident quand la réparation est nécessaire à la poursuite du voyage en sécurité, les salaires et frais d'entretien des capitaine, officiers et équipage raisonnablement encourus pendant la période supplémentaire d'immobilisation en ce port ou lieu jusqu'à ce que le navire soit ou aurait dû être mis en état de poursuivre son voyage, seront admis en avarie commune.

Le combustible et les approvisionnements consommés pendant la période supplémentaire d'immobilisation seront admis en avarie commune à l'exception du combustible et des approvisionnements consommés en effectuant des réparations non admissibles en avarie commune.

Les frais de port encourus durant cette période supplémentaire d'immobilisation seront de même admis en avarie commune, à l'exception des frais qui ne sont encourus qu'à raison de réparations non admissibles en avarie commune.

Cependant, si des avaries au navire sont découvertes dans un port ou lieu de chargement ou d'escale sans qu'aucun accident ou autre circonstance extraordinaire en rapport avec ces avaries se soit produit au cours du voyage, les salaires et frais d'entretien des capitaine, officiers et équipage, le combustible et les approvisionnements consommés ainsi que les frais de port encourus pendant l'immobilisation supplémentaire pour les besoins de la réparation des avaries ainsi découvertes, ne seront pas admis en avarie commune même si la réparation est nécessaire à la poursuite du voyage en sécurité.

Quand le navire est condamné ou ne poursuit pas son voyage primitif, les salaires et frais d'entretien des capitaine, officiers et équipage et le combustible et les approvisionnements consommés et les frais de port ne seront admis en avarie commune que jusqu'à la date de la condamnation du navire ou de l'abandon du voyage ou jusqu'à la date d'achèvement du déchargement de la cargaison en cas de condamnation du navire ou d'abandon du voyage avant cette date.

- (c) Pour l'application de la présente règle ainsi que des autres règles, les salaires comprennent les paiements faits au capitaine, officiers et équipage ou à leur profit, que ces paiements soient imposés aux armateurs par la loi ou qu'ils résultent des conditions et clauses des contrats de travail.
- (d) Le coût des mesures prises pour prévenir ou minimiser un dom-

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- (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 discharging, storing or reloading of cargo whenever the cost of those operations is admissible 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 made good as general average, when and only when the cost of those measures respectively is admitted as general average.

Rule XIII. Deductions from Cost of Repairs

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 31st 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.

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.

The costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated

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mage à l'environnement sera admis en avarie commune lorsqu'il aura été encouru dans l'une ou toutes les situations suivantes:

- (i) lorsqu'il est engagé dans le cadre d'une opération conduite pour le salut commun qui, si elle avait été engagée par une partie extérieure à l'aventure maritime commune, lui aurait donné droit à une indemnité d'assistance;
- (ii) lorsqu'il est une condition de l'entrée ou de la sortie d'un port ou d'un lieu quelconque dans les situations prévues à la Règle X (a);
- (iii) lorsqu'il est une condition de séjour dans un port ou un lieu quelconque dans les situations prévues à la Règle XI (b), pourvu qu'en cas de fuite ou de rejet effectif de substances polluantes, le coût de toutes mesures supplémentaires prises pour prévenir ou minimiser la pollution ou le dommage à l'environnement ne soit pas admis en avarie commune;
- (iv) lorsqu'il a un lien nécessaire avec le déchargement, le stockage ou le rechargement de la cargaison, chaque fois que le coût de ces opérations est admissible en avarie commune.

Règle XII. Dommage causé à la cargaison en la déchargeant, etc.

Le dommage ou la perte subis par la cargaison, le combustible ou les approvisionnements dans les opérations de manutention, déchargement, emmagasinage, rechargement et arrimage, seront admis en avarie commune lorsque le coût respectif de ces opérations sera admis en avarie commune et dans ce cas seulement.

Règle XIII. Déduction du coût des réparations.

Les réparations à admettre en avarie commune ne seront pas sujettes à des déductions pour différence du "neuf au vieux" quand du vieux matériel sera, en totalité ou en partie, remplacé par du neuf, à moins que le navire ait plus de quinze ans; en pareil cas la déduction sera de un tiers.

Les déductions seront fixées d'après l'âge du navire depuis le 31 décembre de l'année d'achèvement de la construction jusqu'à la date de l'acte d'avarie commune, excepté pour les isolants, canots de sauvetage et similaires, appareils et équipements de communications et de navigation, machines et chaudières, pour lesquels les déductions seront fixées d'après l'âge des différentes parties auxquelles elles s'appliquent.

Les déductions seront effectuées seulement sur le coût du matériel nouveau ou de ses parties au moment où il sera usiné et prêt à être mis en place dans le navire.

Aucune déduction ne sera faite sur les approvisionnements, matières consommables, ancrs et chaînes.

Les frais de cale sèche, de slip et de déplacement du navire seront admis en entier.

Les frais de nettoyage, de peinture ou d'enduit de la coque ne seront pas admis en avarie commune à moins que la coque ait été peinte ou enduite dans les douze mois qui ont précédé la date de l'acte d'avarie com-

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within the twelve months preceding the date of the general average act in which case one half of such costs shall be allowed.

Rule XIV. Temporary Repairs

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 admitted as general average.

Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be admitted 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.

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 made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.

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 made Good for Cargo Lost or Damaged by Sacrifice

The amount to be made good 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. 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.

When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be made good 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

The contribution to a general average shall be made upon the actual net values of the property at the termination of the 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

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mune; en pareil cas ces frais seront admis pour moitié.

Règle XIV. Réparations provisoires.

Lorsque des réparations provisoires sont effectuées à un navire, dans un port de chargement, d'escale ou de refuge, pur le salut commun ou pour des avaries causées par un sacrifice d'avarie commune, le coût de ces réparations sera bonifié en avarie commune.

Lorsque des réparations provisoires d'un dommage fortuit sont effectuées afin de permettre l'achèvement du voyage, le coût de ces réparations sera admis en avarie commune, sans égard à l'économie éventuellement réalisée par d'autres intérêts, mais seulement jusqu'à concurrence de l'économie sur les dépenses qui auraient été encourues et admises en avarie commune, si ces réparations n'avaient pas été effectuées en ce lieu.

Aucune déduction pour différence du "neuf au vieux" ne sera faite du coût des réparations provisoires admissibles en avarie commune.

Règle XV. Perte de fret.

La perte de fret résultant d'une perte ou d'un dommage subi par la cargaison sera admise en avarie commune, tant si elle est causée par un acte d'avarie commune que si cette perte ou ce dommage est ainsi admis.

Devront être déduites du montant du fret brut perdu les dépenses que le propriétaire de ce fait aurait encourues pour le gagner, mais qu'il n'a pas exposées par suite du sacrifice.

Règle XVI. Valeur à admettre pour la cargaison perdue ou avariée par sacrifice.

Le montant à admettre en avarie commune pour dommage ou perte de cargaison sacrifiée sera le montant de la perte éprouvée de ce fait en prenant pour base le prix au moment du déchargement vérifié d'après la facture commerciale remise au réceptionnaire ou, à défaut d'une telle facture, d'après la valeur embarquée. Le prix au moment du déchargement inclura le coût de l'assurance et le fret, sauf si ce fret n'est pas au risque de la cargaison.

Quand une marchandise ainsi avariée est vendue et que le montant du dommage n'a pas été autrement convenu, la perte à admettre en avarie commune sera la différence entre le produit net de la vente et la valeur nette à l'état sain, telle qu'elle est calculée dans le premier paragraphe de cette Règle.

Règle XVII. Valeurs contributives.

La contribution à l'avarie commune sera établie sur les valeurs nettes réelles des propriétés à la fin du voyage sauf que la valeur de la cargaison sera le prix au moment du déchargement vérifié d'après la facture commerciale remise au réceptionnaire ou, à défaut d'une telle facture, d'après la valeur embarquée. La valeur de la cargaison comprendra le coût de l'assurance et le fret sauf si ce fret n'est pas au risque de la car-

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such invoice from the shipped value. 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. 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.

To these values shall be added the amount made good 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.

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.

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

Mails, passengers' luggage, personal effects and accompanied private motor vehicles shall not contribute in 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

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gaison, et sous déduction des pertes ou avaries subies par la cargaison avant ou pendant le déchargement. La valeur du navire sera estimée sans tenir compte de la plus ou moins value résultant de l'affrètement coque nue ou à temps sous lequel il peut se trouver.

A ces valeurs sera ajouté le montant admis en avarie commune des propriétés sacrifiées, s'il n'y est pas déjà compris. Du fret et du prix de passage en risque seront déduits les frais et les gages de l'équipage qui n'auraient pas été encourus pour gagner le fret si le navire et la cargaison s'étaient totalement perdus au moment de l'acte d'avarie commune et qui n'ont pas été admis en avarie commune.

De la valeur des propriétés seront également déduits tous les frais supplémentaires y relatifs, postérieurs à l'événement qui donne ouverture à l'avarie commune, à l'exception des frais qui auront été admis en avarie commune ou qui incombent au navire en vertu d'une décision allouant l'indemnité spéciale prévue à l'article 14 de la Convention Internationale de 1989 sur l'assistance ou de toute autre disposition de portée semblable.

Dans les situations prévues au troisième paragraphe de la Règle G, la cargaison et les autres propriétés contribueront sur la base de leur valeur à leur destination d'origine à moins qu'elles n'aient été vendues ou qu'il n'en ait été autrement disposé avant l'arrivée à destination, et le navire contribuera sur sa valeur nette réelle à la fin du déchargement de la cargaison.

Quand une cargaison est vendue en cours de voyage, elle contribue sur le produit net de vente augmenté du montant admis en avarie commune.

Le courrier, les bagages des passagers, les effets personnels et les véhicules à moteur privés et accompagnés ne contribueront pas à l'avarie commune.

Règle XVIII. Avaries au navire.

Le montant à admettre en avarie commune pour dommage ou perte subis par le navire, ses machines et/ou ses appareils, du fait d'un acte d'avarie commune, sera le suivant:

- (a) en cas de réparation ou de remplacement, le coût réel et raisonnable de la réparation ou du remplacement du dommage ou de la perte sous réserve des déductions à opérer en vertu de la Règle XIII;
- (b) dans le cas contraire, la dépréciation raisonnable résultant d'un tel dommage ou d'une telle perte jusqu'à concurrence du coût estimatif des réparations.

Mais lorsqu'il y a perte totale ou que le coût des réparations du dommage dépasserait la valeur du navire une fois réparé, le montant à admettre en avarie commune sera la différence entre la valeur estimative du navire à l'état sain sous déduction du coût estimatif des réparations du dommage n'ayant pas le caractère d'avarie commune, et la valeur du navire en son état d'avarie, cette valeur pouvant être déterminée par le produit net de vente, le cas échéant.

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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

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

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

Rule XX. Provision of Funds

A commission of 2 per cent. on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average.

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.

The cost of insuring general average disbursements shall also be admitted in general average.

Rule XXI. Interest on Losses made Good in General Average

Interest shall be allowed on expenditure, sacrifices and allowances in general average at the rate of 7 per cent. per annum, 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.

Rule XXII. Treatment of Cash Deposits

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum 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 payable by cargo in respect to which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

Règle XIX. Marchandises non déclarées ou faussement déclarées.

La perte ou le dommage causé aux marchandises chargées à l'insu de l'armateur ou de son agent, ou à celles qui ont fait l'objet d'une désignation volontairement fausse au moment de l'embarquement, ne sera pas admis en avarie commune, mais ces marchandises resteront tenues de contribuer si elle sont sauvées.

La perte ou le dommage causé aux marchandises qui ont été faussement déclarées à l'embarquement pour une valeur moindre que leur valeur réelle sera admis sur la base de la valeur déclarée, mais ces marchandises devront contribuer sur leur valeur réelle.

Règle XX. Avance de fonds.

Une commission de deux pour cent sur les débours d'avarie commune autres que les salaires et frais d'entretien du capitaine, des officiers et de l'équipage et le combustible et les approvisionnements qui n'ont pas été remplacés durant le voyage, sera admise en avarie commune.

La perte financière subie par les propriétaires des marchandises vendues pour obtenir les fonds nécessaires en vue de faire face aux dépenses d'avarie commune sera admise en avarie commune.

Les frais d'assurance de l'argent avancé pour payer les dépenses d'avarie commune seront également admis en avarie commune.

Règle XXI. Intérêts sur les pertes admises en avarie commune.

Un intérêt sera alloué sur les dépenses, sacrifices et bonifications classées en avarie commune, au taux de sept pour cent par an, jusqu'à l'expiration d'un délai de trois mois à compter de la date du dépôt du règlement d'avarie commune, en tenant dûment compte des paiements provisionnels effectués par ceux qui sont appelés à contribuer, ou prélevés sur le fonds des dépôts d'avarie commune.

Règle XXII. Traitement des dépôts en espèces.

Lorsque des dépôts en espèces auront été encaissés en garantie de la contribution de la cargaison à l'avarie commune, aux frais de sauvetage ou frais spéciaux, ces dépôts devront être versés, sans aucun délai, à un compte joint spécial aux noms d'un représentant désigné pour l'armateur et d'un représentant désigné pour les déposants dans une banque agréée par eux deux. La somme ainsi déposée augmentée, s'il y a lieu, des intérêts, sera conservée à titre de garantie pour le paiement aux ayants droits en raison de l'avarie commune, des frais de sauvetage ou des frais spéciaux payables par la cargaison et en vue desquels les dépôts ont été effectués. Des paiements en acompte ou des remboursements de dépôts peuvent être faits avec l'autorisation écrite du dispacheur. Ces dépôts, paiements ou remboursements, seront effectués sans préjudice des obligations définitives des parties.

**DRAFT INTERNATIONAL CONVENTION
OFF-SHORE MOBILE CRAFT**

**PROJET DE CONVENTION INTERNATIONALE
SUR LES ENGINES MOBILES
D'EXPLOITATION DES FONDS MARINS**

DRAFT CONVENTION ON OFF-SHORE MOBILE CRAFT

FINAL REPORT OF THE CHAIRMAN OF THE INTERNATIONAL SUB-COMMITTEE

1. At its sixty-third session held in September 1990, the IMO Legal Committee decided to request the Secretariat to contact the CMI with a view to having the CMI prepare an updated version of the Rio Draft Convention on Offshore Mobile Craft in the light of developments since the draft convention was approved in 1977. The Secretary General did so in a letter to the CMI President dated 22nd November 1990.

The CMI Executive Council accepted to undertake the task and requested Mr. Frode Ringdal of Norway, to prepare a Questionnaire on the matter to be submitted to the Member Associations. Altogether, 12 Associations replied. The CMI then set up an International Sub-Committee under the Chairmanship of Mr. Ringdal to prepare an update of the draft convention based on the replies received. The International Sub-Committee met three times: On 9th December 1992, 2nd April 1993 and 24th September 1993. An updated draft was submitted to the CMI for consideration at the CMI 35th International Conference in Sydney 2-8 October 1994.

No changes were made in the updated Draft Convention at the Sydney Conference and the Draft (to be referred to as the Sydney Draft Convention on Mobile Off-Shore Craft) was unanimously approved by the conference which by 29 member associations voting passed the following resolution:

“The CMI submits to the IMO Sydney Draft adopted as completion of its consideration of the Rio Draft in accordance with the IMO terms of reference.”

The IMO was represented by an observer from its Legal Affairs and External Relations Division at all three Sub-Committee meetings as well as at all discussions of the matter at the CMI Conference in Sydney.

After the approval of the new draft convention the Conference also resolved unanimously that:

“The CMI establish a working group for the further study of, and development of where appropriate, an international convention of off-shore units and related matters.”

The resolution was based on a Canadian background paper submitted to the Conference advocating that an off-shore convention should cover not only the nautical/maritime features of the craft in the transit and mobile mode, but also all other off-shore activities including the explor-

PROJET DE CONVENTION SUR LES ENGINES MOBILES D'EXPLOITATION DES FONDS MARINS

RAPPORT FINAL DU PRESIDENT DE LA SOUS-COMMISSION*

1. Lors de sa 63^{ème} session, tenue en septembre 1990, le Comité Juridique de l'OMI a décidé d'inviter son Secrétariat à entrer en relation avec le CMI pour lui demander de préparer une mise à jour du projet de Convention établi à Rio sur les Engins Mobiles d'Exploitation des Fonds Marins, à la lumière des développements survenus depuis l'approbation en 1977 de ce projet de Convention. Le Secrétaire-Général l'a fait dans une lettre au Président du CMI en date du 22 novembre 1990.

Le Conseil Exécutif du CMI a accepté de prendre en charge cette tâche et a confié à M. Frode Ringdal, de Norvège, le soin d'élaborer sur ce sujet un Questionnaire à soumettre aux Associations Membres. Au total 12 Associations y ont répondu. Le CMI a alors mis en place une Sous-Commission Internationale sous la Présidence de M. Ringdal afin de préparer une mise à jour du projet de convention en fonction des réponses reçues. La Sous-Commission Internationale s'est réunie à trois reprises le 8 décembre 1992, le 2 avril 1993 et le 24 septembre 1993. Un projet actualisé a alors été soumis au CMI pour être étudié au cours de la 35^{ème} Conférence Internationale du CMI qui s'est tenue à Sydney du 2 au 8 octobre 1994.

Aucune modification n'a été apportée au Projet de Convention actualisé lors de la Conférence de Sydney et le Projet (désigné comme "*le Projet de Convention de Sydney sur les Engins Mobiles d'Exploitation des Fonds Marins*") a été approuvé à l'unanimité par la Conférence, laquelle par le vote des 29 associations membres a adopté la résolution suivante:

"Le CMI soumettra à l'OMI le projet de Sydney comme constituant l'aboutissement de son étude du projet de Rio conformément à la mission reçue de l'OMI".

L'OMI a été au cours des trois réunions de la Sous-Commission ainsi que lors de toutes les discussions tenues sur le sujet à la Conférence du CMI à Sydney, représentée par un observateur appartenant à la Division des Affaires Juridiques et des Relations Extérieures.

Après l'approbation du nouveau projet de convention la Conférence a également adopté à l'unanimité la résolution suivante:

"Le CMI constituera un groupe de travail international chargé de l'étude complémentaire, et le cas échéant du développement d'une Con-

* Traduction établie par l'Association Française du Droit Maritime.

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ation and exploitation of petroleum and seabed mineral resources by units permanently fixed to the sea-bed.*

At its meeting in Sydney on 9th October 1994 the CMI Executive Council appointed a working group to look further into the matter and make a preliminary report.

2. Since the Rio Draft Convention on Off-Shore Mobile Craft was adopted in September 1977, off-shore oil exploration, production and auxiliary activities have expanded considerably, particularly in three specific fields:

- a. A substantial increase in the number of off-shore drilling units;
- b. A very substantial increase in movements of drilling units throughout the world;
- c. A noticeable increase in the number of averages and accidents involving off-shore craft.

a. Whereas, there were 374 mobile drilling units in existence at the end of 1976, there were 617 such units at the peak of 1985. Since then the number of units has been reduced somewhat, but by the end of 1994, a much larger number of units was in operation than by the end of 1976.

b. A distinctive feature of the development has been the movement of drilling units between different Continental Shelves and over large geographical areas. The long-term drilling contracts, which were prevailing in the early 1980's, were replaced by short-term contracts thereafter which called for more frequent rig moves. That feature has been prevalent to the present day. At the same time an important development for drilling rig mobility was the introduction around 1980 of a series of heavy-lift semi-submersible vessels which could carry jack-ups on deck and which made movement of such units over large areas much faster and less risky than before when the only alternative was "wet tow".

c. Nevertheless, the past decade has also experienced a number of averages by way of collisions, groundings, breaking of towing lines, capsizings, foundering and other accidents which have demonstrated the need for having international rules governing the handling of such events.

However, the CMI Member Associations have felt that the development since 1977 has not been such as to merit substantial amendments to the 1977 Rio Draft Convention as regards the nautical/maritime aspects of craft in the transit or mobile mode.

3. The Rio Draft Convention's principal feature was to make the international maritime conventions applicable to mobile craft, but not to include units permanently fixed to the sea-bed. The CMI International Sub-Committee as well as the Sydney Conference discussed whether or not to extend the Draft Convention by including some other topics as herein described. However, it was decided not to do so.

* The Canadian background paper is published after the text of the Draft Convention.

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vention internationale sur les unités d'exploitation des fonds marins et questions annexes''

Cette résolution était fondée sur l'étude soumise à la Conférence par la délégation canadienne, destinée à démontrer qu'une convention sur l'exploitation des fonds marins devrait couvrir non seulement les aspects nautiques et maritimes des engins au cours de leurs transferts et de leurs déplacements, mais aussi les autres activités d'exploitation des fonds marins, y compris l'exploration et l'exploitation du pétrole et des ressources minérales du sous-sol marin par des unités fixées de façon permanente au sol marin.*

Lors de sa réunion tenue le 9 octobre 1994 à Sydney, le Conseil Exécutif du CMI a constitué un groupe de travail chargé de l'étude complémentaire de la question et de l'élaboration d'un rapport préliminaire.

2. Depuis que le Projet de Convention sur les Engins Mobiles d'Exploitation des Fonds Marins a été adopté en septembre 1977, on a assisté à une extension considérable des activités liées à l'exploration et à l'exploitation des champs pétrolifères en mer et à leurs industries annexes, plus particulièrement dans trois domaines spécifiques: a. Une augmentation importante du nombre des unités de forage en mer; b. Une augmentation très importante des mouvements d'unité de forage à travers le monde; c. Une augmentation notable du nombre des avaries et accidents impliquant des engins d'exploitation des fonds marins.

a. Alors qu'il y avait 374 unités mobiles de forage en activité à la fin de 1976, ce nombre s'est élevé à un maximum de 617 au cours de l'année 1985. Si ce nombre s'est quelque peu réduit depuis lors, il se trouve toutefois qu'à la fin de 1994 il était encore beaucoup plus important qu'à la fin de 1976.

b. Un aspect particulier de cette évolution a été le mouvement des unités de forage entre les différents plateaux continentaux et sur des secteurs géographiques étendus. Aux contrats de forage à long terme, qui étaient la règle dans les années 1980, ont succédé des contrats à court terme, qui ont eux-mêmes engendré de plus fréquents déplacements des plates-formes. Cet aspect de la situation a prévalu jusqu'à maintenant. En même temps le développement important de la mobilité des plates-formes de forage a généré l'apparition autour de 1980 d'une série de navires transporteurs de colis lourds semi-submersibles, capables d'assurer le transport des plates-formes en pontée et rendant ce type de transport sur de longues distances plus rapide et moins risqué que dans le passé lorsque l'on avait recours au seul remorquage en haute mer.

c. Néanmoins la dernière décennie a vu survenir un grand nombre d'accidents de type abordage, échouement, rupture de remorques, chavirement, naufrage et autres dommages qui ont mis en évidence le besoin de voir régir ces événements par des règles internationales.

* L'étude de l'Association canadienne est publié après le texte du Projet de Convention.

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- a. A proposal had been made to include provisions on wreck removal. The Conference considered that such provisions would be useful and desirable, but noted that no international convention on wreck removal is in existence in respect of vessels, but that the IMO Legal Committee has put the topic on its working agenda. It was concluded that wreck removal as regards off-shore mobile craft had better be included in an international convention on vessel wreck removal.
- b. The Collision Convention deals with collisions between vessels, but contains no provisions on vessels striking fixed objects. The Sydney Conference was of the opinion that striking should be covered. However it was concluded that a separate provision on striking would be superfluous. A vessel striking another vessel while berthed or at anchor, is really involved in a collision under the Collision Convention. Hence, when in article 2 of the Rio Draft Convention the Collision Convention has been made applicable to craft to which it would not otherwise apply, its provision will apply also when a stationary off-shore mobile craft is struck by another vessel or unit.
- c. The Sydney Conference agreed with the International Subcommittee that provisions on jurisdiction as between flag states and Continental Shelf states should not be made as the issue is complex and controversial.
- d. The Conference discussed whether or not pollution liability as dealt with in the Rio Draft Article 7 should be extended to include liability also for pollution emanating from a well or reservoir. The Canadian Association felt that such an expansion would be an important topic to be dealt with in a possible future comprehensive convention on off-shore activities. However, having regard to the fact that the Sydney Draft as well as the Rio Draft are confined to off-shore mobile craft and that liability for pollution emanating from a well or reservoir is not covered by the P&I Underwriters, the Conference concluded that liability for such pollution should not be incorporated in Article 7.

The principal modifications of the Rio Draft made in Sydney were to incorporate the new or revised international maritime conventions adopted since 1977 and is detailed below.

5. The following amendments to the articles of the Rio Draft Convention were considered or made in Sydney:

ARTICLE 1

Some changes in the wording had been proposed for clarification. However, the Conference concluded that no improvement would really be obtained by that and the Article was retained as it was.

ARTICLE 2

No amendments were proposed in respect of the collision provisions.

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Toutefois, les Associations Membres du CMI ont considéré que l'évolution constatée depuis 1977 n'a pas été telle qu'elle justifie des amendements substantiels aux dispositions du projet de Convention de Rio de 1977 qui concernent les aspects nautiques et maritimes des engins en cours de transfert ou de déplacement.

3. La principale caractéristique du projet de Convention de Rio était de rendre les conventions maritimes internationales applicables aux engins mobiles, mais non pas de les étendre aux unités fixées de façon permanente dans le sol marin. La Sous-Commission Internationale du CMI, tout comme la Conférence de Sydney, ont discuté du point de savoir s'il fallait ou non étendre le Projet de Convention à d'autres sujets ci-après énumérés. Cependant il a été décidé de ne pas procéder à une telle extension.

- a. Il a été proposé d'ajouter certaines dispositions sur le retrait des épaves. La Conférence a considéré que de telles dispositions seraient utiles et souhaitables, mais a observé qu'aucune convention internationale sur le retrait des épaves n'existe en matière de navires, encore que le Comité Juridique de l'OMI ait mis le sujet à son ordre du jour. Il a été estimé en conséquence que le retrait des épaves en matière d'engins d'exploitation des fonds marins trouverait davantage sa place dans une convention internationale sur le retrait des épaves de navires.
- b. La Convention sur l'abordage traite des abordages entre navires mais ne contient aucune disposition relative aux heurts d'objets fixes par des navires. La Conférence de Sydney a émis l'opinion qu'il devrait être traité de ces heurts. Cependant il a été finalement décidé qu'une disposition particulière relative à ces heurts serait superflue. En réalité un navire qui heurte un autre navire à quai ou au mouillage commet bien un abordage, au sens de la Convention sur l'abordage. Dès lors que l'article 2 du projet de Convention de Rio rend applicable la Convention sur l'abordage aux engins auxquels elle ne s'appliquerait pas autrement, il s'en déduit que cette disposition rendra également la Convention applicable lorsqu'un engin mobile d'exploitation des fonds marins, en situation immobile, se trouvera heurté par un autre navire ou une autre unité.
- c. La Conférence de Sydney a partagé l'avis de la Sous-Commission Internationale pour écarter du projet toute disposition sur la compétence entre les états du pavillon et les états auxquels ressortissent les plateaux continentaux, ces questions étant considérées comme trop complexes et sujettes à controverse.
- d. La Conférence a discuté du point de savoir si la responsabilité en matière de pollution, telle que traitée par l'article 7 du projet de Rio, devrait ou non être étendue pour couvrir également la responsabilité pour pollution provenant d'un puits ou d'un réservoir. L'Association canadienne a estimé qu'une telle extension était un sujet important à traiter dans la perspective d'une éventuelle future convention englobant toutes les activités d'exploitation des fonds marins. Cependant eu égard au fait que le projet de Sydney tout comme le pro-

Part II - The Work of the CMI

ARTICLE 3

In the listing of the salvage conventions reference has been made to the International Convention on Salvage dated April 18, 1989. That convention explicitly excludes from its application mobile off-shore drilling units engaged in exploration or production of sea-bed mineral resources. The Conference concluded that when such a specific provision has been made in the recently adopted salvage convention, a corresponding exception should be made to the application of the 1910 Salvage Convention. In consequence a proviso to that effect has been added at the end of the Article.

ARTICLE 4

No amendments were proposed.

ARTICLE 5

The Sydney Conference discussed whether limitation of liability should be based on tonnage or on monetary value. In the end it was concluded that Article 5 should remain as it is.

ARTICLE 6

In the list of conventions to be applied to rights in craft a reference has been added to the International Convention on Maritime Liens and Mortgages dated May 6, 1993 and the United Nations Convention on Conditions for Registration of Ships dated February 7, 1986.

ARTICLE 7

To the reference to the CLC Convention on Oil Pollution have been added the words "or as amended by the 1976 or 1992 protocols" thereby bringing the reference up to date.

ARTICLE 8

The reference to the provisions contained in article 10 has been deleted in as much as article 10 has been deleted for reasons described below.

ARTICLE 9

In the heading the word "platform" has been replaced by the word "craft" and the words of the text "which are platforms" have been deleted. The reason is that the word "platform" has another meaning in the United States than it appears to have in Europe. It should be pointed out, however, that the word "platform" has been used in other international maritime conventions.

ARTICLE 10

Has been deleted as it was held to be superfluous. The 1993 Maritime Liens and Mortgages Convention expressly provides that no maritime lien shall attach to craft in respect of liability for pollution damage.

Off-Shore Mobile Craft

jet de Rio ne visent que les engins mobiles d'exploitation des fonds marins, et eu égard au fait que la responsabilité pour pollution provenant d'un puits ou d'un réservoir n'est pas couverte par les Clubs de Protection, la Conférence en a conclu que l'article 7 ne devrait pas traiter de la responsabilité à raison d'une telle pollution.

Les modifications principales du projet de Rio, faites à Sydney, ont consisté à incorporer les conventions maritimes internationales, nouvelles ou révisées, adoptées depuis 1977 et dont le détail est donné ci-après.

5. Les modifications suivantes aux articles du Projet de Convention de Rio ont été considérées ou adoptées à Sydney.

ARTICLE 1:

Certains changements de définition ont été proposés pour les besoins de la clarification. Pendant la Conférence a finalement considéré qu'aucun progrès ne pourrait être réalisé par ces changements et l'article est demeuré tel quel.

ARTICLE 2:

Aucun changement n'a été proposé au regard des dispositions sur l'abordage.

ARTICLE 3:

Dans la liste des Conventions sur l'assistance une référence a été faite à la convention internationale sur l'Assistance, en date du 18 avril 1989. Cette Convention écarte explicitement de son champ d'application les unités mobiles de forage des fonds marins engagés dans l'exploration ou la production des ressources minérales des fonds marins. La Conférence en a tiré pour conséquence que si une telle exclusion spécifique a été faite dans la Convention sur l'Assistance récemment adoptée, une exclusion semblable devrait être faite dans l'application de la Convention sur l'Assistance de 1910. En conséquence un paragraphe à cet effet a été ajouté à la fin de cet article.

ARTICLE 4:

Aucun changement n'a été proposé.

ARTICLE 5:

La Conférence de Sydney a discuté du point de savoir si la limitation de responsabilité devrait être basée sur le tonnage ou sur une unité monétaire. Il a été finalement décidé que l'article 5 devrait demeurer tel quel.

ARTICLE 6:

Dans la liste des Conventions applicables aux droits sur les engins a été rajoutée une référence à la Convention Internationale sur les Privilèges et Hypothèques, en date du 6 mai 1993 et à la Convention des Nations-Unies sur les Conditions d'Immatriculation des Navires, en date du 7 février 1986.

ARTICLE 7:

A la référence sur la Convention CLC sur la Pollution par Hydro-

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ARTICLE 11

Has now become article 10. In order to be in conformance with the wording of other international maritime conventions, the words “for title” and the words “of its owner” have been replaced by the words at the end “who’s flag the craft is flying”.

ARTICLE 12

The clause on savings has been deleted as it was found to be superfluous.

6. In Sydney the French Association pointed out that the French wording of the updated Rio Draft is not quite satisfactory. Mr. Jean-Serge Rohart undertook to provide a more precise version which the CMI has accepted with appreciation.

Frode Ringdal
Chairman
International Sub-Committee

Off-Shore Mobile Craft

carbures ont été ajoutés les mots “ou tel qu’amendé par les Protocoles de 1976 ou 1992”, pour permettre d’actualiser cette référence.

ARTICLE 8:

La référence aux dispositions contenues dans l’article 10 a été supprimée dans la mesure où l’article 10 a été lui-même supprimé pour les raisons rappelées ci-dessous.

ARTICLE 9:

Dans le titre, le mot “plate-forme” a été remplacé par le mot “engin”, ainsi que les mots “qui sont des plates-formes”, au motif que le mot “plate-forme” a aux Etats-Unis une autre signification qu’il semble en avoir en Europe. Il devrait être remarqué cependant que le mot “plate-forme” a été utilisé dans d’autres conventions maritimes internationales.

ARTICLE 10:

Il a été supprimé comme superflu. La Convention sur les Privilèges et Hypothèques Maritimes de 1993 dispose expressément qu’aucun privilège maritime ne pourra grever un engin au titre d’une responsabilité pour dommage par pollution.

ARTICLE 11:

Il est maintenant devenu article 10. De manière à assurer une conformité avec le texte des autres conventions maritimes internationales, les mots “*de son propriétaire*” ont été remplacés par les mots “*de l’état dont l’engin bat le pavillon*”.

ARTICLE 12:

La clause de sauvegarde a été supprimée car elle a été trouvée superflue.

6. A Sydney l’Association Française a fait observer que la traduction en français du projet révisé de Rio n’était pas pleinement satisfaisante. M. Jean-Serge Rohart s’est engagé à fournir une version plus précise, proposition que le CMI a volontiers acceptée.

Frode Ringdal
Président
de la Sous-Commission Internationale

OFF-SHORE MOBILE CRAFT RESOLUTION

APPROVED OCTOBER 6, 1994

- a. WHEREAS, the Comité Maritime International (CMI) has as its object the unification of maritime law in all of its aspects;
- b. WHEREAS, the Executive Council of the CMI, responding to a request by the International Maritime Organization (IMO) to consider and, if appropriate, update or revise the draft convention on Off-Shore Mobile Craft, approved by the CMI Conference held in Rio de Janeiro in 1977 (the "Rio Draft"), placed this subject on the agenda of the 35th International CMI Conference.
- c. WHEREAS, the CMI undertook and now has completed its consideration of the Rio Draft in accordance with the IMO terms of reference and prepared a revision of the Rio Draft (the "Sydney Draft"), but, at the same time, has considered the need for further work and study of any convention on off-shore craft and related matters; and
- d. WHEREAS, the CMI nevertheless recognizes that more extensive consultation with intergovernmental organizations, governments, non-governmental organizations, industry and other interested parties should be undertaken;

BE IT THEREFORE RESOLVED THAT:

1. The CMI submits to IMO the Sydney Draft as completion of its consideration of the Rio Draft in accordance with the IMO terms of reference;
2. The CMI establish an international working group for the further study of, and development of where appropriate, an international convention on offshore units and related matters; and
3. The working group present its initial report to the CMI Executive Council on or before December 31, 1995, and further report thereafter no less than annually until its work is concluded.

RESOLUTION SUR LES ENGINES MOBILES D'EXPLOITATION DES FONDS MARINS

APPROUVÉE LE 6 OCTOBRE 1994

- a. Considérant que le Comité Maritime International (CMI) a pour objet l'unification du droit maritime dans tous ses aspects;
- b. Considérant que le Comité Exécutif du CMI, répondant à l'invitation qui lui en a été faite par l'Organisation Maritime Internationale (OMI) d'étudier et, le cas échéant, de mettre à jour ou réviser le projet de convention sur les Engins Mobiles d'Exploitation des Fonds Marins, tel qu'approuvé par la Conférence du CMI tenue à Rio de Janeiro en 1977 (le "Projet de Rio"), a mis le sujet à l'ordre du jour de la 35^{ème} Conférence Internationale du CMI;
- c. Considérant que, ayant entrepris et maintenant achevé son étude du Projet de Rio conformément à la mission reçue de l'OMI, le CMI a préparé une révision du Projet de Rio (le "Projet de Sydney") mais qu'en même temps il a pris en considération le besoin d'entreprendre plus avant l'étude d'une convention sur les engins d'exploitation des fonds marins et sur certaines questions qui y sont liées, et
- d. Considérant que le CMI reconnaît cependant que devrait être entreprise une plus large consultation des organisations intergouvernementales, des gouvernements, des organisations non-gouvernementales, des industries et autres parties intéressées

PAR CES MOTIFS, IL A ÉTÉ DÉCIDÉ QUE:

1. Le CMI soumettra à l'OMI le Projet de Sydney comme constituant l'aboutissement de son étude du Projet de Rio conformément à la mission reçue de l'OMI;
2. Le CMI constituera un groupe de travail international chargé de l'étude complémentaire, et le cas échéant du développement, d'une convention internationale sur les unités d'exploitation des fonds marins et questions annexes; et
3. Le groupe de travail présentera le 31 décembre 1995 au plus tard son rapport préliminaire au Conseil Exécutif du CMI et par suite lui rendra compte, une fois par an au moins, de ses travaux jusqu'à leur achèvement.

DRAFT INTERNATIONAL CONVENTION ON OFF-SHORE MOBILE CRAFT

Article 1 Definition

In this Convention "Craft" shall mean any marine structure of whatever nature not permanently fixed into the sea bed which

- a) is capable of moving or being moved whilst floating in or on water, whether or not attached to the sea bed during operations, and
- b) is used or intended for use in the exploration, exploitation, processing, transport or storage of the mineral resources of the sea-bed or its subsoil or in ancillary activities.

Article 2 Collisions

A State Party which is also a party to

- The International Convention for the unification of certain rules of law with respect to collision between vessels and Protocol of signature dated September 23, 1910 or to
- The International Convention for the unification of certain rules concerning civil jurisdiction in matters of collisions dated May 10, 1952, or to
- The International Convention for the unification of certain rules relating to penal jurisdiction in matters of collision or other incidents of navigation dated May 10, 1952.

shall apply the rules of such convention or conventions to craft to which they would not otherwise apply.

Article 3 Salvage

A State Party which is also a party to

- The Convention for the unification of certain rules of law relating to assistance and salvage at sea and Protocol of signature dated September 23, 1910, or to
- The said Convention with Protocol dated May 27, 1967.
- The International Convention on salvage dated April 28, 1989.

shall apply the rules of the said convention or conventions with Protocol to craft to which they would not otherwise apply, provided, however, that the 1910 Convention shall not apply to fixed or floating platforms or to mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of seabed mineral resources.

PROJET DE CONVENTION INTERNATIONALE SUR LES ENGINES MOBILES D'EXPLOITATION DES FONDS MARINS

Article 1 Définition

Dans la présente convention "Engin" signifie toute structure marine de quelque nature que ce soit, non fixée de manière permanente dans le sol marin, qui

- a) est capable de se déplacer ou d'être déplacée en flottant sur ou sous la surface de la mer, et attachée ou non au sol marin au cours des opérations, et
- b) est utilisée, ou est destinée à être utilisée, à l'exploration, l'exploitation, le traitement, le transport ou le stockage des ressources minérales du sol ou du sous sol marins, ou encore à des activités auxiliaires.

Article 2 Abordage

Un Etat contractant qui est également partie à

- la Convention Internationale pour l'unification de certaines règles en matière d'abordage et protocole de signature, en date du 23 septembre 1910 ou à
- la Convention Internationale pour l'unification de certaines règles relatives à la compétence civile en matière d'abordage, en date du 10 mai 1952, ou à
- la Convention Internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage ou autres événements de navigation, en date du 10 mai 1952,

appliquera les règles de cette convention ou de ces conventions aux engins auxquels elles n'auraient pas autrement à s'appliquer.

Article 3 Assistance

Un Etat contractant qui est également partie à

- la Convention Internationale pour l'unification de certaines règles en matière d'assistance et de sauvetage maritimes et Protocole de signature en date du 23 septembre 1910, ou à
 - ladite Convention selon Protocole en date du 27 mai 1967,
 - la Convention Internationale sur l'assistance en date du 28 avril 1989,
- appliquera les règles de ladite convention ou desdites conventions et protocole aux engins auxquels elles n'auraient pas autrement à s'appliquer, étant cependant précisé que la Convention de 1910 ne s'appliquera pas

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Article 4**Arrest**

A State Party which is also a party to the International Convention for the unification of certain rules relating to the arrest of seagoing ships, dated May 10, 1952, shall apply the rules of that convention to craft to which they would not otherwise apply.

Article 5**Limitation of Liability**

A State Party which is also a party to

- The International Convention for the unification of certain rules relating to the limitation of liability of owners of seagoing vessels and Protocol of signature dated August 25, 1924, or to
- The International Convention relating to the limitation of the liability of owners of seagoing ships and Protocol of signature dated October 10, 1957, or as amended by the 1979 Protocol or to
- The Convention on limitation of liability for maritime claims dated November 19, 1976.

shall, subject to Article 9 below, apply the rules of any such convention to craft to which they would not otherwise apply. In the case of the 1976 Convention, a State Party shall do so notwithstanding the provisions of Article 15, paragraph 5 of that convention.

Article 6**Rights in Craft**

A State Party which is also a party to

- The International Convention for the unification of certain rules relating to maritime liens and mortgages and Protocol of signature dated April 10, 1926, or to
- The International Convention for the unification of certain rules relating to maritime liens and mortgages dated May 27, 1967, or to
- The International Convention on Maritime Liens and Mortgages dated May 6, 1993, or to
- The International Convention relating to registration of rights in respect of vessels under construction dated May 27, 1967, or to
- The United Nations Convention on Conditions for Registration of Ships dated February 7, 1986.

shall subject to Article 10 below, apply the rules of such convention or conventions to craft to which they would not otherwise apply, provided that the State Party has established a system of registration of rights in relation to such craft.

Where such a system permits the registration of ownership of craft, a right so registered in one State Party shall be recognized by the other State Parties.

For the purpose of this Article a structure's status as a craft as defined in Article 1 shall be determined in accordance with the law of the State where a title to or a mortgage on such structure is registered.

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aux plateformes fixes ou flottantes ni aux unités mobiles de forage des fonds marins lorsque ces plateformes ou unités se trouvent sur site, engagées dans l'exploration, l'exploitation ou la production des ressources minérales du sol marin.

Article 4

Saisie

Un Etat contractant qui est également partie à la Convention Internationale pour l'unification de certaines règles sur la saisie conservatoire des navires de mer, en date du 10 mai 1952, appliquera les règles de cette convention aux engins auxquels elles n'auraient pas autrement à s'appliquer.

Article 5

Limitation de Responsabilité

Un Etat contractant qui est également partie à

- la Convention Internationale pour l'unification de certaines règles concernant la limitation de la responsabilité des propriétaires de navires de mer et Protocole de signature en date du 25 août 1924, ou à
- la Convention Internationale sur la limitation de la responsabilité des propriétaires de navires de mer et Protocole de signature en date du 10 octobre 1957 ou telle qu'amendée par le Protocole de 1979, ou à
- la Convention sur la limitation de la responsabilité en matière de créances maritimes en date du 19 novembre 1976,

appliquera, sous réserve des dispositions de l'Article 9 ci-dessous, les règles de telle ou telle de ces conventions aux engins auxquels elles n'auraient pas autrement à s'appliquer. En ce qui concerne la convention de 1976, un Etat contractant en appliquera les dispositions malgré celles de l'article 15 paragraphe 5 de ladite convention.

Article 6

Droits sur les Engins

Un Etat contractant qui est également partie à

- la Convention Internationale pour l'unification de certaines règles relatives aux privilèges et hypothèques maritimes et Protocole de signature, en date du 10 avril 1926, ou à
- la Convention Internationale pour l'unification de certaines règles relatives aux privilèges et hypothèques, en date du 27 mai 1967, ou à
- la Convention Internationale sur les privilèges et hypothèques maritimes du 6 mai 1993, ou à
- la Convention Internationale relative à l'inscription des droits relatifs aux navires en construction en date du 27 mai 1967, ou à
- la Convention des Nations-Unies sur les conditions d'immatriculation des navires, en date du 7 février 1986

appliquera, sous réserve des dispositions de l'article 10 ci-dessous, les règles de telle ou telles conventions aux engins auxquels elles n'auraient pas autrement à s'appliquer, à condition que l'Etat contractant ait établi un système d'inscription des droits relatifs à de tels engins.

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Article 7
Liability for Oil Pollution

Subject to the succeeding paragraph of this Article, a State Party which is also a party to the International Convention on civil liability for oil pollution damage dated November 20, 1969 or as amended by the 1976 or 1992 Protocols, shall apply the rules of that convention to craft insofar as they would not otherwise apply.

A State Party shall apply such rules only in the absence of other applicable provisions on liability contained in other International Conventions to which it is a party.

Article 8**Application of National Rules**

Subject to the provisions contained in Article 9, a State Party, insofar as it is not a party to a convention referred to in Articles 2, 3, 4, 5, 6 and 7, shall apply to craft the rules which the State Party applies to vessels, in relation to the subject matters dealt with in any such convention.

Nevertheless, a State Party may, when enacting legislation with regard to vessels subsequent to this convention coming into force for that State, exclude craft which are not vessels from the application of such new legislation.

Article 9**Minimum Limits of Liability for Craft**

For the purpose of calculating the limit of liability under Articles 5 and 7, craft shall be deemed to be of not less than x tons. The same shall apply to the limit of liability under national law pursuant to Article 8 above if and insofar as such a limit is based on tonnage.

Article 10
Nationality

If, under any of the conventions applicable pursuant to Articles 2, 3, 4, 5, 6 and 7 or the national rules pursuant to Article 8, nationality is a relevant factor, a craft shall be deemed to have the nationality of the State in which it is registered or, if not so registered, the State whose flag the craft is flying.

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Dès lors qu'un tel système permet l'enregistrement des titres de propriété des engins, un titre ainsi enregistré dans un Etat contractant sera reconnu par les autres Etats contractants.

Pour les besoins du présent article, le statut d'un engin tel que défini à l'article 1, sera déterminé conformément à la loi de l'Etat dans lequel un titre ou une hypothèque sur un tel engin est inscrit.

Article 7

Responsabilité pour Pollution par les Hydrocarbures

Sous réserve des dispositions du second paragraphe du présent article, un Etat contractant qui est également partie à la Convention Internationale sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures en date du 29 novembre 1969 ou telle qu'amendée par les Protocoles de 1976 ou 1992, appliquera les règles de ladite convention pour autant qu'elles ne soient autrement applicables.

Un Etat contractant n'appliquera lesdites règles qu'en l'absence de toutes autres dispositions applicables sur la responsabilité résultant de toutes autres conventions internationales auxquelles cet Etat est partie.

Article 8

Application des Règles Nationales

Sous réserve des dispositions de l'article 9, un Etat contractant, pour autant qu'il ne soit pas partie à l'une des conventions visées aux articles 2, 3, 4, 5, 6 et 7 appliquera aux engins les règles qu'il applique aux navires à raison des matières traitées dans chacune desdites conventions.

Toutefois, tout Etat contractant peut, à l'occasion de l'adaptation de sa législation sur les navires pour tenir compte de l'entrée en vigueur de la présente convention dans ledit Etat, exclure de ladite nouvelle législation les engins qui ne seraient pas des navires.

Article 9

Limites Minimales de Responsabilité des Engins

En vue du calcul de limitation de responsabilité prévue aux articles 5 et 7, les engins seront supposés représenter un tonnage minimum de x tonnes. Ceci s'appliquera également à la limitation de responsabilité en vigueur dans les lois nationales en vertu de l'article 8 ci-dessus, si et dans la mesure où la limitation est basée sur le tonnage.

Article 10

Nationalité

Si, aux termes de l'une quelconque des coventions applicables en vertu des articles 2, 3, 4, 5, 6 et 7 ou en vertu des règles nationales applicables en vertu de l'article 8, la nationalité est un facteur déterminant, un engin sera considéré comme ayant la nationalité de l'Etat dans lequel il est immatriculé ou, s'il ne l'est pas, de l'Etat dont il bat le pavillon.

CANADIAN MARITIME LAW ASSOCIATION

BACKGROUND PAPER FOR AN INTERNATIONAL CONVENTION ON OFFSHORE UNITS, ARTIFICIAL ISLANDS AND RELATED STRUCTURES USED IN THE EXPLORATION FOR AND EXPLOITATION OF PETROLEUM AND SEABED MINERAL RESOURCES

A. Introduction

1. This Background Paper is prepared for the XXXVth International Conference of the Comité Maritime International (CMI) in Sydney, Australia. The CMI has been requested to study the subject of Offshore Mobile Craft and the possibility of a draft convention on the subject by the International Maritime Organization (IMO). In the mid-1970's the CMI already studied the subject and produced a Draft Convention on Offshore Mobile Craft at its XXXIst International Conference in Rio de Janeiro, Brazil.¹ However the "Rio Draft" was not further developed by the IMO at that stage. This was principally due to the fact that the softening of global energy prices considerably reduced offshore energy activity. As a result, the subject was superseded in importance by a number of other items on the IMO agenda considered to be more urgent.

2. However, by the early 1990's a number of IMO member-states had, once again, requested that organization to re-examine this subject. This was due to renewed interest in offshore energy development, a growing body of jurisprudence related to a number of accidents involving offshore oil rigs and related offshore structures, commercial and legal problems related to offshore drilling units and, last but not least, the increasing technical sophistication, great variety, and considerable cost of offshore drilling units. Accordingly, the CMI was again requested to provide the IMO with a study and possible draft convention on the subject. At the same time, it was agreed that the 1977 "Rio Draft" had been overtaken by events and that a new draft would be needed. As a result the CMI formed a Working Group and, subsequently, an International Sub-

1. CMI Draft Convention on Offshore Mobile Craft, XXXIst International Conference of the Comité Maritime International, Rio de Janeiro. CMI Yearbook. CMI: Antwerp, 1977, p. 29.

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Committee, under the chairmanship of Mr. Frode Ringdal of Norway, to prepare a study and the subject was subsequently placed on the agenda for the CMI Conference, taking place in Sydney, Australia, October 1994.

3. By June 1992 the CMI Executive Council had decided to place on their agenda the preparation of a comprehensive set of rules for offshore craft, covering the production and drilling mode, as well as the transit mode. It was then decided that governments and the oil industry should be consulted regarding that portion of such rules which would apply to offshore oil exploration and production. Although the CMI Executive Council has not so far reported on the results of these enquiries, the Council decided that the work of the International Sub-Committee should continue on the basis of a report and questionnaire of 24 September 1991.

4. In the interim the CMI International Sub-Committee had decided to base its work on the 1977 CMI Rio de Janeiro Draft and simply update this document. However, at a CMI Seminar in Genoa in 1992 it was argued that this subject should be studied in much greater depth by the CMI, that simply "tinkering" with the Rio Draft might not achieve the results expected by the IMO, and that there were some basic definitional problems on the subject which had to be studied.² This view found considerable support from the Canadian Maritime Law Association (CMLA) and, subsequently from sister associations in the United States, United Kingdom, Australia/New Zealand and several other states.

5. At subsequent meetings of the CMI International Sub-Committee in 1993-4, the CMLA found that it could not support the Rio Draft approach taken by the Sub-Committee for reasons outlined in this Background Paper. Accordingly, the CMLA was requested to produce an alternative working paper, either in conjunction with other maritime law associations or at least supported from other associations when presented. Although it was originally hoped to present such a paper to the International Sub-Committee and have it included in the CMI's Sidney documentation, the tight time frame and additional research required made this impossible. As a result, this Background Paper and Outline for an "International Convention on Offshore Units, Artificial Islands and Related Structures used in the Exploration for and Exploitation of Petroleum and Seabed Mineral Resources" is presented for consideration at the Sidney meeting as a working paper sponsored by the Canadian Maritime Law Association with support from the Maritime Law Association of the United States, the British Maritime Law Association, and the Maritime Law Association of Australia and New Zealand.

2. Edgar Gold with Christopher Petrie, "Pollution from Offshore Activities: An Overview of the Operational, Legal and Environmental Aspects". De La Rue, Colin M., ed., "Liability for Damage to the Marine Environment". London: Lloyds Press, 1993, p. 203.

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B. The CMI Draft and the CMLA's Position

6. In the CMLA's view the 1994 Draft Convention on Offshore Mobile Craft, as tabled for the Sydney Conference,³ fails to provide an adequate international regime for offshore structures for the following broad reasons:

- a) the Draft attempts to impose basic principles of maritime law, designed for ships, on structures which are not ships;
- b) the Draft attempts to provide an artificial distinction between the mobile and non-mobile operations of offshore units;
- c) the Draft attempts to provide an artificial distinction between "mobile" offshore drilling units and other offshore units;
- d) the Draft fails to provide a needed international regime for all offshore structures;
- e) the Draft fails to adequately recognize and/or incorporate the various public and private international law conventions affecting maritime safety, offshore operations, the protection of the marine environment and sustainable development;
- f) the Draft does not appear to reflect any input from the international energy industry whose input to any international regime would be desirable;
- g) the Draft provides an insufficient base for achieving the necessary uniformity of law required for all aspects of offshore operations and activities.

7. This divergent view is not intended as either direct or implied criticism of the work of the CMI International Sub-Committee. In fact, there may well be a question of whether the Sub-Committee's terms of reference permitted it to do much more than it did. Furthermore, the Sub-Committee has known about this divergent view from the beginning and has, in fact, encouraged the presentation of this alternative view. It is recognized that a more comprehensive international regime on offshore structures may well not be attainable at this stage and a more modest initiative, as represented in the present CMI Draft, may have a better chance of success. However, it is questionable what this "success" would actually be! It would result in a very narrow international instrument covering only a fraction of the problem, which would probably not satisfy the IMO, UNEP/UNCED, nor the international energy industry or environmentally-conscious coastal states. On the other hand, as the global maritime and offshore energy community has not so far been presented with a viable option for a comprehensive international offshore regime,

3. Report to the Comité Maritime International from the International Sub-Committee on Offshore Mobile Craft. CMI Doc. Off-Shore 23-XII-93 & CMI Doc. Off-Shore 16-VIII-93.

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such an option must be explored. Furthermore, if the CMI would not undertake this work it might not be done. As a result, this Background Paper and Outline for a Draft Convention not only provides an alternative option but also raises the issues which the drafters and negotiators of such a comprehensive convention would face.

C. The Need for a Comprehensive International Convention

8. An important question that must be posed in this discussion is if there is a need for a comprehensive international convention at all? It is a reasonable question when the following factors are taken into consideration: a) the offshore energy industry's offshore safety and environmental record is generally considered to be satisfactory; b) many coastal states have already in place acceptable regulatory regimes for offshore energy exploration and exploitation; c) the offshore industry has generally dealt with coastal states on a direct bilateral, contractual basis; d) offshore energy resources are generally limited to coastal areas within coastal state jurisdiction; e) due to the high investments required, the offshore energy industry is generally limited in numbers and expected to remain so; and, f) the international oil industry has so far successfully resisted all attempts at international "regulation".

9. As already indicated, there has so far been insufficient indication of whether the international oil industry and its offshore sector would support what is proposed in the CMI Draft or in this alternate proposal. The determination of such support would, obviously, be the task of any CMI working group or international sub-committee in the post-Sydney Conference period. On the other hand, the CMLA has worked closely with a number of legal experts close to the oil industry and it is, therefore, at the very least, possible to address the six obvious questions posed above: Firstly, any safety and environmental record can be improved. Work in offshore areas is inherently dangerous and can also cause serious pollution. That has already been shown in several serious offshore accidents. Accordingly, there is the potential of serious loss of life and catastrophic pollution. Here shipping provides a very good precedent. The establishment of an international safety system, providing a baseline for national regulation and requirements has worked well in the shipping industry for over a century. It is also needed in the offshore industry.

10. Secondly, the fact that a number of coastal states have developed a good regulatory system for exploration and exploitation in the offshore, would mean that the best of these systems could be used as a guideline for an international system, which would be uniform, predictable and thus provide a minimum baseline. This does not mean that another regulatory system is superimposed upon a good national system. International conventions only become "regulatory" when accepted by signatory states and incorporated into their regulatory system. Accordingly, states with good existing systems have no difficulties in accepting international systems. On the other hand, smaller states, especially in the developing world,

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would have access to a uniform, known system. Third, oil companies would continue to deal with coastal state on a direct, bilateral basis. In fact, their negotiations might well be facilitated by an international system which would be known to both sides in advance. However, given that a treaty would include and codify international safety and environmental priorities, the parties would not be able to negotiate anything below the international standards. On the other hand, coastal states would still have the existing prerogative to demand higher-than-international standards.

11. Fourth, offshore energy resources are generally limited to the continental shelf or continental slope and margin areas all within coastal state jurisdiction. At this stage reserves beyond this area are either unknown, non-existent or not technologically attainable. However, a more comprehensive convention should not be confined only to energy resources. There is already seabed mining in many parts of the world. Furthermore, given that conventions take many years to enter into force and, once in force, remain so for many years, it is likely that there may well be exploitation of other seabed resources in the future and, possibly, production of minerals from the water column, and many other offshore activities. Accordingly, any international system should be as comprehensive as possible. Fifth, offshore activities will never attract a very large number of enterprises due to the high investments required. In fact, some in the oil industry believe that the number of offshore enterprises will shrink rather than grow. On the other hand, UNCLOS is expected to enable a new combination of states and investors to carry out offshore operations in the future — not only in energy exploitation and production but also in other areas. Accordingly, an argument that an international convention is not needed as there are only a few operators is not viable. Even a single operator can cause a disaster. If a convention can prevent it, it is worth it!

12. The sixth point, concerning oil industry resistance, to what may be perceived as a new level of “international regulation”, is, obviously, difficult to respond to at this stage. As already indicated, any comprehensive international convention in this area must be developed with the fullest possible input from the industries affected. The ideal draft convention would already have dealt with perceived problems and have received the general support from all interested parties. However, this cannot always be achieved as industry, government and environmental interests may diverge. At that stage, if a treaty receives sufficient support to warrant a diplomatic conference, it is then up to sovereign states to decide if they wish to support, sign and subsequently accept such a convention. Industry opposition simply for the sake of opposing change is not appropriate. Given the maritime safety and marine environmental responsibilities, which will devolve on states with the entry into force of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), as well as the widely supported UNCED Agenda 21 principles, a new international offshore regime is inevitable. The industries affected will have to decide if they wish to be part of a process, which can benefit

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from their input, assistance and support, or if they can oppose a process which will eventually produce a system which may be less to their liking.

13. There are, however, two final points which probably state the most critical reasons for an international regime in this area. An international convention would discourage diverse, unilateral national initiatives, especially those developed in reaction to an accident and in the politically charged atmosphere of its aftermath. Furthermore, a uniform, comprehensive international regime, by creating a suitable framework for secured financing and making risk management more predictable, could well assist better returns from existing assets and facilitate greater private and public investment in offshore petroleum and mineral resource development.

D. Jurisdiction

14. Another question to be raised is whether a more comprehensive offshore convention is within the competence of either the CMI or the IMO? It is conceded that within strict terms of reference the CMI generally confines itself to the "uniformity of maritime law"⁴ and the IMO has generally concentrated on achieving "safer ships and cleaner seas" under its founding convention.⁵ However, it is suggested that this should not be an impediment for either organization to study and develop the subject even outside its strictly "maritime" dimensions. Given the all-embracing language of UNCLOS, in terms of maritime safety and the protection of the marine environment, and in the absence of any other inter-governmental or non-governmental organization interested or capable of addressing this subject, it appears to be quite clear that the IMO should assume that it has the competence to deal with the subject. As a consultant to the IMO and due to its special expertise, the CMI should also assume jurisdiction over the subject. In fact, the CMI should make an unequivocal statement to this effect at the Sydney Conference and, at the same time, urge the IMO, either directly, or through its member states, to do the same.

15. As already stated, it is most desirable that the interested industries be involved in the early development of any international convention. The lack of such consultation has greatly retarded international developments in this area to this time. All sectors of the offshore industry have to be involved in such consultations: oil and mining companies, offshore contractors, technical and professional interests, as well as financial and legal support services. It is significant to note that the only international instrument specifically addressing pollution from offshore exploration

4. Comité Maritime International Constitution (1992). Article 1. CMI Yearbook 1992, p. 6.

5. Convention on the International Maritime Organization. Geneva, 6 March 1948.

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and exploitation activities, the CLEE Convention,⁶ has not so far been accepted by a single state since it was concluded in 1977. However, this convention had relatively little oil industry input and, even more important, was not placed within the jurisdiction of any competent international organization.

16. Another “jurisdictional” factor relates to the regulatory powers envisaged in the offshore region under UNCLOS, which will enter into force a few weeks after the conclusion of the Sydney CMI Conference. Under UNCLOS, coastal states are given exclusive jurisdiction over the exploration and exploitation of coastal resources within the 12-mile Territorial Sea (TS)⁷ and within the 200-mile Exclusive Economic Zone (EEZ)⁸ as well as over a 200-mile Continental Shelf (CS) area,⁹ which for “wide continental margin” states can be extended up to 350 miles. However UNCLOS also provides strict rules for the protection and preservation of the marine environment in the exploration and exploitation of such resources.¹⁰ However, beyond such “national jurisdiction” the resources of the sea bed are subject to the regulatory powers of the International Seabed Authority of the United Nations.¹¹

17. It is assumed that in the foreseeable future most offshore operations are expected to take place within national jurisdiction up to 35 miles. Beyond that limit, deep sea bed mining operations may eventually take place. Although offshore energy technology is already available to develop oil and gas fields in deep ocean areas beyond national jurisdiction, as already stated above, at this stage the likelihood of significant energy reserves in such areas appears to be remote. However, like sea bed mining, this development is not expected to take place until less costly land-based and near-coast resources are exhausted. It is also expected that UNCLOS will gain wider acceptance once some of the treaty’s controversial sea bed provisions are revised. This process is underway at this time. Accordingly, a comprehensive offshore structure convention, which concentrates on practical operations, might be a most useful interim measure. In any case, UNCLOS appears to regard the IMO as “the competent international organization” to deal with this area — especially as it relates to maritime safety and the protection of the marine environment.¹²

18. Another jurisdictional question relates to which legal tribunal would be competent to deal with an incident occurring in the offshore. Should

6. Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration or Exploitation of Seabed Mineral Resources, 1977 (CLEE 1977).

7. United Nations Convention on the Law of the Sea, 1982, Part II.

8. *Ibid*, Part V.

9. *Id.*, Part VI.

10. *Id.*, Part XII.

11. *Id.*, Part XI.

12. *Id.*, Part XII.

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such an incident be dealt with by a national court, which is normally charged with maritime jurisdiction, or should the responsibility be given to another court or tribunal? It is here that the "maritime connection" can be of some use, as most offshore units may be subject to some or all of the following maritime law subject areas: arrest; bills of sale; classification; registry; collisions; general average; mortgages and liens; limitation of liability; marine pollution; safety of life at sea; salvage; tonnage; maritime labour. In other words, it is likely that any court with maritime or admiralty jurisdiction might be best suited to also deal with cases and claims relating to offshore structures.¹³ However, no strong preferences on this point are expressed here as this aspect must be developed in cooperation with the industries concerned. Although the CMLA would prefer a comprehensive and totally inclusive treaty covering all public and private law aspects of offshore operations, the actual "coverage" of such a treaty has to be negotiated between interested parties. However, maritime safety and environmental protection, in its broadest terms can not be negotiable.

E. Definitions.

19. There are a number of definitional problems related to offshore structures. The question of whether offshore mobile craft are ships or not has plagued discussions on the subject since the mid-1970's.¹⁴ It is strongly suggested that this is an unnecessary discussion which has and continues to obscure matters which are of greater importance. Although some of these "craft" have characteristics similar to ships, they are not designed as ships, they do not operate as ships and they should not be defined as ships. In other words, these structures or units, whether self-propelled, mobile, movable or fixed, deserve their own specific, international regime! However, this leads to the further question of whether fixed structures, which essentially have the characteristics of an artificial island, should be included. They are, of course, excluded in the present CMI Draft. They could, obviously, be the subject of a separate treaty or simply be left to bilateral arrangements or agreements with the coastal states involved. However, the CMLA would prefer that a comprehensive international regime on offshore structures include all types.

20. It is believed that the distinctions between mobile, towed, movable and fixed etc. would only lead to eventual confusion. In fact, even the largest offshore structures, such as the Statfjord and Hibernia developments, were designed to be moved to their operating positions and will have to be removed once operations cease. In other words, whether drill-ship, jack-up rig, semi-submersible or "fixed" platform type, the

13. This question has been eloquently discussed in, Summerskill, Michael, "Oil Rigs: Law and Insurance". London: Stevens, 1979, ch. 2.

14. Ibid. See also, Gold, supra Note 2, at p. 225.

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common link of these units is that: they all operate in the offshore marine environment with its inherent dangers; they generally operate in coastal waters of the territorial sea or the exclusive economic zone, utilized for international navigation; they all are attached to the sea bed in one way or another at some time; they all present a hazard to normal navigation; they all have essentially “international” characteristics in terms of owners, operators, contractors, charterers and crew, and they all have the potential of having a negative effect on the marine environment. The continuing discussion of whether these units or structures are “ships” is, therefore, quite analogous to the early days of the aviation industry, when many felt that the maritime regime could be fully adapted for aircraft. This did not work and, by 1944, aviation had its own comprehensive regime,¹⁵ although certain “maritime” principles were indeed adopted by the newer industry.

21. There is another definitional factor. Both the 1977 and 1994 CMI drafts refer to offshore mobile craft used in energy exploitation and development.¹⁶ This appears to exclude other structures and units, such as those used for accommodation, workshops, gas treatment, storage, and other ancillary operations, etc. Obviously, other offshore structures and units used for deep sea mining, scientific research, pipelines, etc. are also excluded. A comprehensive convention could also include such structures. The various structures and their operational capabilities would have to be defined separately in any comprehensive global convention. Although this may be a difficult task it is attainable — especially with cooperation from the industries involved.

F. Liability.

22. Liability arising out of the operations of offshore structures and units, whether “mobile craft” or other is, of course, a major factor. The structures operate in an environment with inherent dangers and, in themselves, possess safety and pollution hazards. In particular, pollution liability has very serious potential, although, in general, the offshore industry has a reasonably good safety and pollution record, which is considered better than that of shipping. However, at present, the potential liabilities very much depend upon the actual mode of operation. A mobile craft, when moved to and from its drilling position, will generally be covered by a special “hull and machinery” policy, by a protection and indemnity (P&I) policy and such other insurances as may be required.¹⁷ However, once the craft or structure commences its drilling

15. The 1944 International Convention on Civil Aviation. (The “Chicago Convention”).

16. *Supra* Notes 1 & 3.

17. Sven-Henrik Svendsen, “Pollution from Offshore Activities — Liability and P & I Insurance Aspects”. De La Rue, *supra* Note 2, p. 233.

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tasks, the insurance cover also changes.¹⁸ Some of the larger “fixed” structures carry special coverages for almost every conceivable risk. The CMI drafts suggest that an international convention should only apply to liabilities which may arise whilst the craft is in the mobile, i.e. navigational mode, as mixing the various operational coverages would be too complicated. This position is not accepted. If a modern ship can carry various types of insurance coverage for hull and machinery, third party liability, cargo and other risks, all carried by different underwriters and all related to different operations, why could this not also apply to off-shore structures? It is, obviously, essential that the change in the various liability regimes be properly defined in any comprehensive convention.

G. Construction.

23. The CMI Draft does not address offshore craft construction standards. At present such standards are principally industry and/or nationally regulated. The IMO has some involvement through the SOLAS Convention¹⁹ (where applicable), but construction standards are only set out in a non-compulsory IMO Construction Code for Mobile Offshore Drilling Units.²⁰ In fact, the offshore industry standards have been quite satisfactory as it is fully aware of the high investment and potential other risks of offshore operations. However, that does not mean that there should not be an international standard codified in a comprehensive convention even if it is based on the standards established by the industry. In the past offshore operations have been carried out by a relatively small group of highly reputable offshore operators and oil companies which, to a great extent, have developed the technology to the high level it has reached today. However, although offshore operations will continue to be the prerogative of companies with high investment capabilities, it is likely that new technology and newly exploitable petroleum and other mineral resources will attract some new operators in the coming years and it appears to be most timely to codify existing standards.

H. Operational Safety.

24. At present the operational safety, including personnel standards etc. are subject to a conglomerate of industry, national and limited international regulations. Considerable differences exist throughout the world and even between various operators. Often operational safety is part of the bilateral negotiation between potential operators and the licensing coastal state. This has led to problems and some significant accidents although, as already indicated, the industry’s safety record is quite good.

18. See, for example, Offshore Pollution Liability Agreement, 1974 (OPOL 1974) as concluded by 16 major oil companies.

19. International Convention for the Safety of Life at Sea, 1974 (as amended).

20. Code for the Construction and Equipment of Mobile Offshore Drilling Units, 1989. London: IMO, 1990.

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Yet several recent reports on major offshore accidents have been critical of problems in this area.²¹ A comprehensive global convention would codify the minimum operational safety requirements for offshore operations. Such requirements would, once again, draw heavily on existing industry standards, but would essentially provide the basis for a specific "offshore SOLAS", which would address personnel standards including training and qualifications, chain of command rules, fire and explosion prevention, abandonment, on-board-security, offshore air operations, offshore supply vessels, communications, pollution prevention, etc.

25. The operational safety of offshore structures and units also relates to external factors. UNCLOS sets out certain basic rules related to artificial islands as well as safety and avoidance requirements near and around offshore units and structures.²² This should be codified in a comprehensive international treaty, as should basic principles related to the marking, lighting, sound signals and collision avoidance. Finally, the removal of units and structures, which have completed their operations, should also be subject to international law. Although the IMO has already commenced an examination of this area, a more comprehensive international regime would be of considerable assistance in this area.

I. Conclusion.

26. This Background paper and the accompanying outline for an international draft convention indicate the view of the Canadian Maritime Law Association that offshore operations require a comprehensive international regime for all types of offshore operations in all operating modes. The present CMI approach (the Rio Update) only addresses a part of the problem and, accordingly, continues to provide insufficient legal uniformity and protection for the majority of offshore operations. It is believed that the CMI, working closely with the offshore industry and the IMO, possesses the best expertise to produce a comprehensive International Convention on Offshore Units, Artificial Islands and Related Structures used in the Exploration for an Exploitation of Petroleum and Seabed Mineral Resources. It is understood that such a draft cannot be completed at the Sydney Conference. However, if the CMLA proposal, which has already received input and support from a number of national maritime law associations of states which are engaged in offshore operations, is more widely accepted by the Conference, then the CMI should offer to produce a more specific draft for the IMO at an early date.

27. The attached outline for a draft convention* is, of necessity, in the form of suggestions and notes. Although the CMLA has attempted to include as many issues as possible, it is likely that there are many more

21. Sea Gem & Piper Alpha (U.K.); Ocean Ranger (Canada); Alexander Kielland (Norway).

22. U.N. Convention on the Law of the Sea, 1982. Articles 21 & 60.

* This document is not published, but may be obtained from the CMI Secretariat or the Canadian Maritime Law Association.

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that will have to be considered during the proposed next drafting and discussion stage. For example, the outline's preamble only sets out the tone of what is being suggested and many of the definitions require much greater expert input than that of the present drafters. On the other hand, the CMLA is prepared to make its background work, research etc. available and to assist any CMI working group charged with turning a rough outline into an important, widely-accepted international treaty.

1 August 1994

Canadian Maritime Law Association

**GUIDELINES
ON
OIL POLLUTION DAMAGE**

RESOLUTION

The XXXVth International Conference of the Comité Maritime International in Sydney from 2nd to 8th of October

Having decided to adopt *Guidelines on Oil Pollution Damage*

Recommends the wide dissemination and application of the *Guidelines*;

and

Resolves that a *Report of its work* be annexed to the *Guidelines* by way of background, although the *Report* is not to be construed as forming part of the *Guidelines*.

RESOLUTION

La XXXVème Conférence Internationale du Comité Maritime International, tenue à Sydney du 2 au 8 octobre 1994

Ayant décidé d'adopter les Règles de Conduite sur les Dommages de Pollution par des Hydrocarbures

Recommande *que les Règles de Conduite soient largement diffusées et appliquées*

et

Adopte *la résolution qu'un Rapport de ses travaux soit annexé aux Règles de Conduite pour servir d'élément de réflexion, sans que pour autant ce Rapport puisse être considéré comme faisant partie desdites Règles.*

CMI GUIDELINES ON OIL POLLUTION DAMAGE

INTRODUCTORY NOTE

These Guidelines were adopted at the 35th International Conference of the Comité Maritime International (CMI), held in Sydney on 2-8 October 1994.

They are concerned with the admissibility and assessment of claims for oil pollution damage. They do not deal in any way with claims for personal injury. The CMI has as its object the unification of maritime law, and since its foundation in 1897 it has been wholly or partly responsible for the preparatory work leading to several international conventions in the maritime field. These include the Civil Liability Convention 1969 (CLC), the principal international instrument governing civil liability for oil pollution from ships. Together with the complementary Fund Convention 1971, which provides for supplementary compensation, CLC established an international system which has achieved widespread acceptance: by October 1994 it had been ratified by no less than 88 States.

The international community reaffirmed its commitment to this system in 1984 and again in 1992 when Protocols were agreed to modify both Conventions, and to keep the levels of compensation up-to-date.

CLC entered into force in 1975 and in the first 15 years of its operation it was almost invariably possible for claims to be settled by negotiation. In the early 1990s, however, there were concerns that increasing public interest in environmental issues would lead to growing problems resulting from legal uncertainties in this field. These were highlighted in 1990 when the USA decided not to join the international system, but to adopt its own laws in the form of the US Oil Pollution Act (OPA). The Act set out a detailed framework of compensation quite different from the concept of "pollution damage" as defined in the Civil Liability and Fund Conventions, and the Protocols thereto. This definition is couched in only very general terms, leaving scope for uncertainty as to the types of recoverable claim. It was foreseen that divergent decisions in different national courts could seriously undermine the uniform application of the Conventions which is so important for their success.

The scope for such divergences was seen as all the greater when some of the issues were marked in most countries by a paucity of legal precedent, whilst others involved notorious difficulty in defining the extent of recoverable loss. A particular problem envisaged was that of determining the proper scope of allowable claims for economic loss: this has

RECOMMANDATIONS DU CMI SUR LES DOMMAGES DUS A LA POLLUTION PAR DES HYDROCARBURES*

NOTE INTRODUCTIVE

Ces recommandations ont été adoptées au cours de la 35^{ème} Conférence Internationale du Comité Maritime International qui se déroulait à Sydney du 2 au 8 octobre 1994. Elles concernent la recevabilité et l'évaluation des demandes pour les dommages dus à la pollution par des hydrocarbures. Elles ne sauraient s'appliquer, en aucune façon, aux demandes pour les dommages corporels.

Le CMI a pour vocation l'unification du droit maritime et, depuis sa fondation en 1897, il a été entièrement ou partiellement à l'origine des études conduisant à plusieurs conventions internationales dans le domaine maritime. Parmi elles, figure la Convention de 1969 sur la responsabilité civile (CLC), principal instrument international régissant la responsabilité civile pour les dommages dus à la pollution par des hydrocarbures provenant des navires. En même temps que la Convention complémentaire de 1971 portant création d'un fonds d'indemnisation, qui prévoyait des indemnisations supplémentaires, la CLC a établi un système international qui est parvenu à un accord général : en octobre 1994, elle avait déjà été ratifiée par 88 Etats. La communauté internationale réaffirmait son attachement à ce système en 1984, et à nouveau en 1992, quand des Protocoles ont décidé de modifier les deux Conventions et de réactualiser les niveaux d'indemnisation.

La CLC est entrée en application en 1975 et au cours des quinze premières années, il a presque toujours été possible de solutionner les réclamations par le biais de la négociation. Au début des années 1990, il est apparu que l'intérêt croissant de l'opinion pour l'écologie et la protection de l'environnement conduirait à des problèmes croissants du fait des incertitudes juridiques dans ce domaine. Cela apparut nettement en 1990 quand les USA décidèrent de ne pas rejoindre le système international, mais d'adopter leurs propres lois, sous la forme du "US Oil Pollution Act (OPA)". L'OPA mettait en place un mécanisme d'indemnisation des préjudices, très différent du concept de "dommages par pollution", tels que définis par les Conventions sur la responsabilité civile et instaurant le fonds, ainsi que les Protocoles ultérieurs. Ce concept est basé sur des termes très généraux, laissant un champ d'incertitude pour définir les préjudices susceptibles d'être indemnisés. On pouvait alors prévoir que des décisions divergentes de juridictions nationales différentes pourraient sérieusement compromettre l'uniformité de l'application de ces Conventions, uniformité particulièrement importante pour leur succès.

* Traduction établie par l'Association Française du Droit Maritime.

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been a recurrent cause of difficulty in most legal systems, and the question arose whether clearer criteria could be developed in relation specifically to economic loss resulting from pollution. Similar problems were also anticipated in relation to economic loss claimed under the US Oil Pollution Act.

Against the above background the CMI decided in 1991 to appoint an International Sub-Committee and Working Group to examine this subject. National associations affiliated to the CMI were circulated with a Report and Questionnaire in which numerous issues were canvassed as to the types of claim for which compensation might be awarded under national laws. An analysis of the replies led to a Colloquium on the subject in Genoa in September 1992, and subsequently to further work described in a Discussion Paper which was presented for consideration by the 52 national associations affiliated to the CMI and reviewed at the Conference in October 1994. The Conference resolved that a Report based on the Discussion Paper be prepared and annexed to the Guidelines by way of background, although the Report is not to be construed as forming part of the Guidelines.

In preparing these Guidelines the CMI has aimed, first, to state the extent to which claims are thought to be recoverable under the law as applied in the majority of countries, and with due account being taken also of the criteria developed by the International Oil Pollution Compensation Fund; secondly, to employ terminology whose meaning is understood and acceptable in countries with a variety of different legal traditions; and thirdly, to strike a satisfactory balance between the desire on the one hand for greater certainty as to the types of recoverable claim, and on the other the need to retain sufficient flexibility to deal on their merits with the many different types of claims which may be made in practice.

The CMI Guidelines do not alter legal rights in any way. They are intended mainly to promote a consistent approach in cases of doubt as to what the relevant legal rights might be. They have been drawn up in the belief that many national courts will strive, when applying laws based on international conventions, to do so in a manner which is consistent with the approach taken in other countries. In that context it is hoped that when courts are faced with the task of determining difficult issues in this field, or of enunciating new principles of law, they may derive some assistance from the formulations which have evolved from the CMI's work.

PART I: GUIDELINES GENERAL

1. The importance is to be recognised of maintaining internationally a uniform treatment of claims for pollution damage, including a uniform application of the International Convention on Civil Liability for Oil Pollution Damage (CLC 1969) and the International Con-

CMI Guidelines on Oil Pollution Damage

L'étendue de telles différences est davantage apparue lorsque de nombreuses décisions ont semblé être des cas d'espèce, tandis que d'autres démontraient de réelles difficultés à définir les préjudices indemnisables. Un problème particulier était de déterminer l'étendue des réclamations susceptibles d'être accueillies pour les préjudices de type économique : cela avait été une importante source de difficultés dans la plupart des systèmes juridiques et la question s'est posée de savoir quel serait le meilleur critère à retenir pour le préjudice économique résultant d'une pollution. Des problèmes identiques étaient prévisibles au sujet des préjudices économiques invoqués sous l'empire du US Oil Pollution Act.

En considération de ces différents éléments, le CMI décida en 1991 de mettre en place une Sous-Commission Internationale et un Groupe de Travail pour examiner ce sujet. Toutes les associations adhérant au CMI reçurent un rapport et un questionnaire dans lequel de nombreuses solutions étaient proposées pour le type de réclamations susceptibles d'être indemnisées dans le cadre de la loi interne. Une analyse des réponses permit d'organiser un Colloque sur le sujet à Gênes en septembre 1992 et le résultat de ces travaux fut décrit dans une note qui fut présentée aux 52 associations nationales adhérant au CMI et examinée à la Conférence d'octobre 1994. Cette Conférence décida qu'un rapport basé sur le compte-rendu des discussions devrait être préparé et annexé aux Recommandations, bien que ce rapport ne soit pas conçu comme une partie intégrante de ces Recommandations.

En préparant ces Recommandations, le CMI a tout d'abord eu pour objectif de fixer ou de définir la mesure dans laquelle les réclamations devraient être considérées comme indemnisables, dans le cadre de la loi applicable dans la majorité des pays et en tenant compte également du critère retenu par le Fonds International d'Indemnisation pour les Dommages dus à la Pollution par les Hydrocarbures ; le CMI a ensuite eu pour objectif d'employer une terminologie dont la signification est compréhensible et acceptable par des pays de cultures et de systèmes juridiques différents; enfin, le CMI a eu pour objectif d'instaurer un équilibre satisfaisant entre le désir de définir avec précision les types de réclamations admissibles et le besoin de retenir une souplesse suffisante pour pouvoir néanmoins examiner les très nombreux types de réclamations susceptibles d'apparaître dans la pratique.

Les recommandations du CMI ne modifient en aucune façon les droits. Elles sont essentiellement faites pour permettre une approche efficace en cas de difficultés d'interprétation. Elles ont été conçues avec la conviction que la plupart des juridictions nationales, au moment d'appliquer des lois basées sur des conventions internationales, s'efforceront d'utiliser l'interprétation la plus proche de celle retenue dans les autres pays. Dans ce contexte, on peut espérer que lorsque les tribunaux seront confrontés à des difficultés d'interprétation ou de création de nouveaux principes de droit, ils seront aidés par les formulations résultant du travail du CMI.

1 ÈRE PARTIE: DISPOSITIONS GENERALES

1. Il doit être reconnu l'importance de maintenir, sur le plan international, un traitement uniforme des demandes relatives aux dommages dus

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vention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention 1971) together with any amendments thereof, and to that end due weight should be attached to any relevant policy, decisions or resolutions of the International Oil Pollution Compensation Fund.

2. Compensation may be refused or reduced if a claimant fails to take reasonable steps to avoid or mitigate any loss, damage or expense.

PART II: ECONOMIC LOSS

3. For the purpose of these Guidelines the following definitions are employed:
 - (a) "Economic loss" comprises both consequential loss and pure economic loss, as defined below;
 - (b) "Consequential loss" means financial loss sustained by a claimant as a result of physical loss of or damage to property caused by contamination by oil;
 - (c) "Pure economic loss" means financial loss sustained by a claimant otherwise than as a result of such physical loss of or damage to property;
 - (d) "Property" means anything in which the claimant has a legally recognised interest by virtue of a proprietary or possessory right.
4. In principle compensation is payable for consequential loss.
5. Pure economic loss may be compensated when caused by contamination by oil, but normally only as set out below. The loss must be caused by the contamination itself. It is not sufficient for a causal connection to be shown between the loss and the incident which caused the escape or discharge of the oil from the vessel involved in the incident.
6.
 - (a) Pure economic loss will be treated as caused by contamination only when a reasonable degree of proximity exists between the contamination and the loss.
 - (b) In ascertaining whether such proximity exists, account is to be taken of all the circumstances, including (but not limited to) the following general criteria:
 - (i) the geographic proximity between the claimant's activities and the contamination;
 - (ii) the degree to which the claimant is economically dependent on an affected natural resource;
 - (iii) the extent to which the claimant's business forms an integral part of economic activities in the areas which are directly affected by the contamination;
 - (iv) the scope available for the claimant to mitigate his loss;
 - (v) the foreseeability of the loss; and

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à la pollution par des hydrocarbures, incluant une application uniforme de la Convention Internationale sur la Responsabilité Civile pour les Dommages dus à la Pollution par des Hydrocarbures (CLC 1969) et de la Convention Internationale sur l'Établissement d'un Fonds International d'Indemnisation des Dommages dus à la Pollution par des Hydrocarbures (Convention sur le Fonds d'Indemnisation 1971), et de tous amendements les concernant, et dans ce but, une importance particulière devrait être donnée à toutes politique, décisions ou résolutions appropriées du Fonds International d'Indemnisation pour la Pollution par des Hydrocarbures.

2. L'indemnisation peut être refusée ou réduite si le demandeur ne prend pas toutes les mesures nécessaires pour éviter ou diminuer toutes pertes, dommages ou dépenses engagées.

2 EME PARTIE: PREJUDICE COMMERCIAL

("ECONOMIC LOSS")

3. Pour les besoins de ces Recommandations, les définitions suivantes sont utilisées:
 - (a) "Préjudice commercial" (economic loss) comprend à la fois un préjudice conséquent (consequential loss) et un pur préjudice commercial (pur economic loss), tels que définis ci-après;
 - (b) "Préjudice conséquent" (consequential loss) signifie toute perte financière subie par un demandeur résultant d'une perte matérielle ou de dommages à sa propriété causés par une contamination par hydrocarbures;
 - (c) "Pur préjudice commercial" (pure economic loss) signifie toute perte financière subie par un demandeur, résultant d'une cause autre qu'une perte matérielle ou que des dommages à sa propriété;
 - (d) "Propriété" signifie tout bien dans lequel le demandeur a un intérêt légalement reconnu, en vertu d'un droit de possession ou de propriété.
4. En principe, une indemnisation est due en cas de préjudice conséquent.
5. Un pur préjudice commercial peut être indemnisé lorsqu'il est causé par une contamination par hydrocarbures, mais, en principe, seulement dans les cas ci-dessous exposés. Le préjudice doit être causé par la contamination elle-même. L'établissement d'un lien de causalité entre le préjudice et l'incident qui a causé la fuite ou la perte d'hydrocarbures par le navire impliqué dans l'incident n'est pas suffisant.
6. (a) Un pur préjudice commercial sera considéré comme étant causé par la seule contamination lorsqu'un degré raisonnable de proximité existe entre la contamination et le préjudice.
- (b) Pour déterminer si une telle proximité existe, toutes les circonstances doivent être prises en compte, y compris (sans y être limitées) les critères généraux suivants:
 - (i) La proximité géographique entre les activités du demandeur et la contamination;
 - (ii) Le degré selon lequel le demandeur est économiquement dépendant de la ressource naturelle contaminée;
 - (iii) La mesure dans laquelle les activités du demandeur forment

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- (vi) the effect of any concurrent causes contributing to the claimant's loss.
7. Whilst the result in practice of applying the foregoing general principles will always depend on the circumstances of the individual case, recovery will not normally extend -
- (a) to parties other than those who depend for their income on commercial exploitation of the affected coastal or marine environment, such as, for example, those involved in:
 - (i) fishing, aquaculture and similar industries;
 - (ii) the provision of tourist amenities such as hotels, restaurants, shops, beach facilities and related activities;
 - (iii) the operation of desalination plants, salt evaporation lagoons, power stations and similar installations reliant on the intake of water for production or cooling processes;
 - (b) to parties claiming merely to have suffered:
 - (i) delay, interruption or other loss of business not involving commercial exploitation of the environment;
 - (ii) loss of taxes and similar revenues by public authorities.
8. Compensation may be paid for economic loss if it results from damage to, or loss or infringement of, a recognised legal right or interest of the claimant. Such a right or interest must be vested only in the claimant (or in a reasonably limited class of persons to which the claimant belongs) and must not be freely available to the public at large.
9. Compensation may be paid for the costs of reasonable measures taken by a claimant to prevent or minimise economic loss, where such loss would itself have qualified for compensation under the terms of these Guidelines. In determining what is reasonable for this purpose, it will normally be required that:
- (a) the costs of the measures were reasonable;
 - (b) the costs of the measures were in proportion to the loss which they were intended to prevent or minimise;
 - (c) the measures were appropriate and offered a reasonable prospect of being successful; and
 - (d) in the case of a marketing campaign, the measures related to actual targeted markets.

PART III: PREVENTIVE MEASURES, CLEAN-UP AND RESTORATION

10. (a) The cost of preventive measures (including clean-up and disposal) is recoverable insofar as both the measures themselves and the cost thereof were reasonable in the particular circumstances.
- (b) In general compensation is payable where the measures taken or equipment used in response to an incident were likely, on the basis

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- une part intégrante des activités économiques de la région, affectées par la contamination;
- (iv) La possibilité pour le demandeur de réduire son préjudice;
 - (v) La prévisibilité du préjudice; et
 - (vi) L'effet de tout autre cause ayant concouru au préjudice du demandeur.
7. Bien que le résultat, en pratique, de l'application des principes généraux précédemment exposés dépendra toujours des circonstances de chaque cas individuel, l'indemnisation ne pourra normalement pas s'étendre
- (a) aux parties autres que celles dont les revenus dépendent de l'exploitation commerciale de l'environnement marin ou côtier pollué, telles que, par exemple, les parties engagées dans:
 - (i) les activités de pêche, aquaculture et industries similaires;
 - (ii) l'exploitation d'installations touristiques telles que des hôtels, restaurants, magasins, équipements de plage et de toutes activités qui y sont liées;
 - (iii) l'exploitation d'usines de désalinisation, de marais salants, d'unités de production d'énergie et toutes installations similaires utilisant l'eau de mer à des fins de production ou de refroidissement.
 - (b) aux parties prétendant avoir seulement subi:
 - (i) un retard, une interruption ou tout autre perte d'activité ne concernant pas l'exploitation commerciale de l'environnement;
 - (ii) la perte d'impôts ou de toutes taxes similaires par les autorités publiques.
8. Une indemnité pourra être payée en réparation d'un préjudice commercial, si celui-ci résulte d'un dommage, ou de la perte, ou de l'atteinte à un droit ou un intérêt juridiquement reconnu du demandeur. Un tel droit ou intérêt doit appartenir exclusivement au demandeur (ou une catégorie raisonnablement limitée de personnes à laquelle le demandeur appartient) et ne doit pas être à la libre disposition du public, pris dans une acception large.
9. Une indemnité pourra être payée pour le coût de toutes mesures raisonnablement entreprises par un demandeur pour empêcher ou minimiser le préjudice commercial (economic loss), lorsque ce préjudice aurait lui-même donné droit à une indemnisation conformément aux dispositions de ces Recommandations. Pour déterminer, à cet effet, ce qui est raisonnable, il sera normalement exigé que:
- (a) les coûts de ces mesures soient raisonnables;
 - (b) les coûts de ces mesures soient proportionnés au préjudice qu'elles étaient destinées à empêcher ou minimiser;
 - (c) les mesures soient appropriées, et offrent des chances raisonnables de succès;
- et
- (d) dans le cas d'une étude de marché, les mesures correspondent aux marchés envisagés.

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of an objective technical appraisal at the time any relevant decisions were taken, to be successful in avoiding or minimising pollution damage. Compensation is not to be refused by reason only that preventive or clean-up measures prove ineffective, or mobilized equipment proves not to be required. A claim should however be refused if the steps taken could not be justified on an objective technical appraisal, in the circumstances existing at the relevant time, of the likelihood of the measures succeeding, or of mobilized equipment being required.

- (c) Where a government agency or other public body takes an active operational role in preventive measures or clean-up, compensation may be claimed for an appropriate proportion of normal salaries paid to their employees engaged in performing the measures during the time of such performance, and such a claim will not be rejected on the sole ground that the salaries concerned would have been payable by the claimant in any event.
 - (d) Where any plant or equipment owned by a claimant is reasonably used for the purpose of preventive or clean-up measures, the claimant may claim reasonable hire charges for the period of the use, and any reasonable costs incurred to clean or repair the plant or equipment after its use; provided always that the aggregate of such charges and/or costs should not exceed the acquisition cost or value of the plant or equipment concerned.
 - (e) Compensation paid in accordance with sub-paragraphs (c) or (d) is to be limited to expenses which relate closely to the clean-up period in question, and is not to include remote overhead charges.
 - (f) Where equipment or material is reasonably purchased for the purpose of preventive or clean-up measures, compensation is payable for the cost of acquisition, but subject always to a deduction for the residual value of such equipment or material after completion of the measures.
 - (g) Compensation is payable for the reasonable cost of repairing damage caused by reasonable preventive or clean-up measures, such as damage to sea-defences, roads and embankments caused by heavy machinery.
 - (h) Compensation is payable for the cost of reasonable measures to clean birds, mammals or reptiles contaminated by oil.
11. Compensation for impairment of the environment (other than loss of profit) shall be limited to the costs of reasonable measures of reinstatement actually undertaken or to be undertaken. It is not payable where the claim is made on the basis of an abstract quantification of damage calculated in accordance with theoretical models.
12. (a) Admissible claims for the cost of reasonable measures of re-

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**3 EME PARTIE: MESURES PREVENTIVES,
NETTOYAGE ET RESTAURATION.**

10. (a) Le coût des mesures préventives (incluant le nettoyage et l'évacuation des déchets) est recouvrable à condition que ces mesures elles-mêmes et leur coût soient raisonnables dans les circonstances particulières qui y ont donné lieu.
- (b) De façon générale, l'indemnité est payable lorsque les mesures prises ou l'équipement utilisé en réponse à un incident étaient susceptibles de réussir, sur la base d'une évaluation technique objective à l'époque où toutes les décisions appropriées ont été prises, permettant ainsi d'éviter ou de minimiser les dommages dus à la pollution. L'indemnité ne doit pas être refusée pour le seul motif que les mesures préventives ou de nettoyage s'avèrent inefficaces, ou que l'équipement utilisé ne s'avère pas indispensable. Une demande devrait cependant être rejetée si les démarches entreprises ne pouvaient être justifiées par une évaluation technique objective, effectuée dans les circonstances existantes à l'époque où ces mesures ont été prises, des chances de réussite de ces mesures, ou de la nécessité des équipements utilisés.
- (c) Lorsqu'une institution gouvernementale, ou toute autre administration prend une part opérationnelle active dans les mesures préventives ou de nettoyage, elles peuvent demander une indemnité pour une proportion appropriée des salaires payés à leurs employés engagés dans l'exécution de ces mesures préventives, durant toute la période de leur exécution, et une telle demande ne sera pas rejetée au seul motif que les salaires concernés auraient été dus par le demandeur en tout état de cause.
- (d) Lorsque des installations ou équipements, dont le demandeur est propriétaire, sont raisonnablement utilisés pour entreprendre des mesures préventives ou de nettoyage, le demandeur peut réclamer des frais raisonnables de location pour leur période d'utilisation, ainsi que les coûts raisonnablement engagés pour nettoyer ou réparer l'installation ou l'équipement après son utilisation; à condition, en toute hypothèse, que le total de ces charges et/ou des ces coûts n'excède pas le prix d'achat ou la valeur de l'installation ou de l'équipement concernés.
- (e) L'indemnité payée conformément aux paragraphes précédents (c) et (d) doit être limitée aux dépenses étroitement liées à la période de nettoyage en question, et ne doit pas inclure des frais généraux qui en sont éloignés.
- (f) Lorsque des équipements ou des matériaux sont raisonnablement achetés pour les besoins de mesures préventives ou de nettoyage, une indemnité représentant le prix d'achat est due, mais il en est toujours déduit la valeur résiduelle de ces équipements ou matériaux après que les mesures ont été effectuées.
- (g) Une indemnité est due pour le coût raisonnable des réparations correspondant aux dommages causés par les mesures raisonnables de prévention ou de nettoyage, tels que les dommages causés aux digues, routes et berges par des machines lourdes.

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instatement need not be limited to the removal of spilt oil, but may include appropriate steps to promote the restoration of the damaged environment or assist in its natural recovery.

- (b) Specific studies may be necessary to quantify or verify pollution damage and to determine whether or not reinstatement measures are in fact feasible and will accelerate natural recovery. Contributions may be paid to the reasonable costs of such studies, provided they are reasonably proportionate to the actual damage, and provided they produce, or are likely to produce, the required data.
- (c) A claimant may recover a reasonable sum in respect of the estimated cost of reinstatement measures, before they have actually been carried out, provided always that the measures could not otherwise be carried out due to lack of financial resources, and provided an undertaking is given, or other satisfactory evidence is provided, that the proposed measures of reinstatement will actually be carried out.
- (d) In determining whether measures of reinstatement are reasonable, account is to be taken of all the relevant technical factors including (but not limited to) the following:
 - (i) the extent to which the observed state of the environment, and any changes therein, are to be regarded as damage actually caused by the incident in question, as distinct from other factors whether man-made or natural;
 - (ii) whether the measures are technically feasible and likely to contribute to the re-establishment at the site in question of a healthy biological community in which the organisms characteristic of that community are present and are functioning normally;
 - (iii) the speed with which the affected environment may be expected to recover by natural processes and the extent to which the reinstatement measures concerned may accelerate (or inadvertently impede) natural processes of recovery; and
 - (iv) whether the cost of the measures is in proportion to the damage or the results which could reasonably be expected.

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- (h) Une indemnité est due pour le coût des mesures raisonnables prises pour nettoyer les oiseaux, mammifères ou reptiles contaminés par des hydrocarbures.
11. L'indemnisation pour la détérioration de l'environnement (autre qu'une perte de profit) sera limitée aux coûts des mesures raisonnables de remise en état effectivement entreprises ou devant être entreprises. Cette indemnité ne sera pas due lorsque la demande est fondée sur une évaluation théorique des dommages, calculée selon des modèles abstraits.
12. (a) Les demandes admissibles pour le coût des mesures raisonnables de remise en état ne doivent pas nécessairement être limitées à la récupération des hydrocarbures déversés, mais peuvent inclure les démarches appropriées pour promouvoir la restauration de l'environnement affecté, ou aider à sa régénération naturelle.
- (b) Des études spécifiques peuvent être nécessaires pour évaluer ou vérifier les dommages causés par la pollution, et pour déterminer si oui ou non, des mesures de remise en état sont effectivement réalisables, et accéléreront la régénération naturelle. Des participations financières peuvent être envisagées pour les coûts raisonnables de ces études, à condition qu'elles soient en proportion avec le dommage réellement causé, et qu'elles fournissent, ou soient susceptibles de fournir, le résultat escompté.
- (c) Un demandeur peut recouvrer un montant raisonnable correspondant au coût estimé des mesures de remise en état, avant qu'elles n'aient effectivement été entreprises, à condition, en tout état de cause, qu'il soit établi que les mesures ne pouvaient autrement être entreprises en raison d'un manque de ressources financières, et à condition que le demandeur promette, ou qu'il fournisse tout autre preuve satisfaisante, que les mesures de remise en état proposées seront effectivement entreprises.
- (d) Pour déterminer si des mesures de remise en état sont raisonnables, tous les éléments techniques appropriés doivent être pris en compte, notamment (sans y être limités) les facteurs suivants:
- (i) si l'état constaté de l'environnement, et les changements qu'il a subis, peuvent être regardés comme des dommages effectivement causés par l'incident en question, distinct de tout autre facteur humain ou naturel;
 - (ii) si les mesures sont techniquement réalisables et susceptibles de contribuer au rétablissement sur le site concerné d'un environnement biologique sain, dans lequel les éléments, caractéristiques de cet environnement seront présents et fonctionneront normalement;
 - (iii) la vitesse à laquelle l'environnement contaminé peut être susceptible de se rétablir par un processus naturel et dans quelle condition les mesures de remise en état concernées peuvent accélérer (ou au contraire empêcher involontairement) les processus naturels de régénération; et
 - (iv) si le coût de ces mesures est proportionné aux dommages ou aux résultats qui pouvaient raisonnablement en être escomptés.

SPECIAL SESSIONS

**THIRD PARTY LIABILITY
CLASSIFICATION SOCIETIES
MARINE INSURANCE**

THIRD PARTY LIABILITY

WORKING GROUP ON THIRD PARTY LIABILITY

by Patrick J.S. Griggs *

As long ago as December 1991 the Executive Council of the CMI appointed a small International Working Group to consider the impact which the HNS Convention (on which the Legal Committee of IMO was working at the time) would have on the 1976 Limitation Convention.

The instruction to the Working Group was that they should, in addition, extend their research and look generally at all maritime conventions dealing with liability and limitation to see whether better harmonisation could be achieved between the various existing Conventions.

Having completed these tasks, it was suggested that the members of the Working Group might like to study the feasibility of rationalising the whole approach to liability and limitation in the maritime sphere. The need for this arises out of the fact that liability and limitation in the maritime sphere have been approached in a piecemeal fashion during this century and there are, in consequence, areas where the liability and limitation regimes created by international convention conflict with each other.

Incidentally the members of this subcommittee were the late Professor Jan Schultz (Chairman), Professor Jan Ramberg, Professor Norbert Trotz and myself.

I would like to be able to report that we had numerous meetings and to be able to lay before you the impressive results of our research. I shall disappoint you (or not as the case may be). We have had some extremely interesting meetings but don't have much to show for it.

Let me try to indicate the way our minds have been working and outline some of the problems that are going to need to be tackled in the short, medium and long term.

First, we should define our terms of reference.

Somebody asked me the other day what is the origin of the expression "Third Party Liability"? If there is such a person as a "third party", who are the first and second parties? The best illustration I could come up with was in the context of motor insurance. The insurer is the one party to the contract of insurance and the policy holder is the other. This accounts for the first and second parties.

What do you call the man who is injured through the negligent use of the car by the policy holder? He is naturally described as a third party.

The expression is obviously apt where we are talking about someone who has a claim arising out of the misconduct of two others, whether

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Working Group on Third Party Liability

they have a contractual or some other relationship. However, it doesn't seem appropriate to refer to someone who has a direct claim arising out of the act or default of another.

So what you may say. If the right of limitation arose only in respect of third party claims, linking "third party liability" with "limitation" would be appropriate.

However, we know that the right to limit can arise in a number of quite distinct situations.

Firstly, the parties may have entered into a contract which provides that one party has a financial limit on his liability to the other. This limit may be purely contractual or it may apply because legislation (domestic law or international convention) dictates that contracts of the type in question should be subject to limitation.

Secondly, a right to limit may apply outside a contractual relationship, being imposed by domestic legislation or international convention. I think most people would regard some, but not all, liability arising in the second group as strictly being third party liability.

So perhaps we have to start off by thinking of a new name for the International Working Group. What about "Marine Liability and Limitation"?

It is now planned to expand the International Working Group (whatever it may now decide to call itself) and place it on active service. The Group's immediate task will be to consider the changes which it will be necessary to make to the 1976 Limitation Convention consequent upon the introduction of an HNS Convention.

One of the excuses which the Working Group has had for not getting down to the detail of this exercise is that the HNS Convention has been surrounded by doubt and controversy.

Those of you who were at the CMI Conference in Montreal in 1981 will remember that we were all very doubtful whether an HNS Convention was "either desirable or practicable". We contented ourselves with producing a seven page report which outlined a number of difficulties which we foresaw. Interestingly we expressed the opinion:

"The shipowner should be entitled to limit his liability under the HNS Convention in accordance with the 1976 Limitation Convention and that there should not be a separate fund for HNS liabilities."

Since that time CMI has watched with interest the efforts which the Legal Committee of the IMO has made to produce a workable HNS Convention. CMI has not, up to now, become actively involved in that process. However there is now work to be done and the CMI is as well placed as anyone to do it.

The timescale for the proposed HNS Convention is now quite short. The Legal Committee is working towards a Diplomatic Conference to be held early in 1996 to finalise the HNS Convention. This means that there will only be two further sessions of the Legal Committee (the 71st session in October 1994 and the 72nd session in April 1995) to put the finishing touches to a draft HNS Convention.

Let me, very briefly, tell you where the Legal Committee has got to with its work on the draft HNS Convention.

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The most recently amended version of the draft Convention is LEG 69/3 (17th May 1993).

As most of you will be aware the draft Convention is structured as a two tier regime.

The first tier has the following characteristics:

1. Strict liability placed upon the shipowner with very a limited range of defences.

2. "Damage" includes loss of life and personal injuries as well as property damage. Claims for loss or damage by contamination of the environment will be paid "provided that compensation for impairment ... other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement". (This formula is similar to the one agreed in the 1984 and 1992 Protocols to the CLC and Fund Conventions).

3. A shipowner's liability can arise from damage caused by a wide range of bulk and packaged substances carried as cargo, these are generally defined by reference to existing international conventions and codes. Bunkers are excluded from the definition of HNS because they are not carried as cargo.

4. The shipowner will be required to maintain insurance or other financial security to cover his liability for damage under the Convention.

5. Liability will be directed away from servants and agents and directed towards the registered owner.

6. The right to limit liability will only be lost "if it is proved that the damage resulted from his personal act or omission, committed with the intent to cause such damage or recklessly and with knowledge that such damage would probably result". (The same test as appears in the 1976 Limitation Convention).

So much for the first, shipowner, tier. The second tier is meant to be the HNS equivalent of the 1971/1992 Oil Pollution Fund.

The characteristics of the second tier scheme are as follows:

1. It will provide a supplementary sum for claims which exceed the liabilities imposed on the shipowner under the first tier.

2. Funds for the second tier scheme will be contributed to by HNS cargo interests.

3. There will be a maximum upper limit on liability under the second tier-scheme.

Considerable headway was made at the 70th session of the Legal Committee held in March-1994 in London which I attended on behalf of CMI. There is still much to be done but the political will is there to see this through to a full convention and under the tactful chairmanship of Alfred Popp the Legal Committee will, without much doubt, resolve the outstanding issues by the end of the 72nd session in April 1995.

There is much which is controversial in this Convention but now is not the time to discuss that.

I am concerned to highlight the impact which the limitation provisions in the draft Convention will have on the 1976 Limitation Convention.

Turning now to the issue of limitation and the linkage between the

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draft HNS Convention and the 1976 Limitation Convention, there are two apparent areas of difficulty.

Small ships can create a pollution risk out of all proportion to their tonnage.

This has been the experience with oil pollution.

The 1976 Limitation Convention recognises this by providing that however small the vessel, it shall be deemed to have a minimum tonnage for limitation purposes. (500 tons '76 Convention).

On the other hand, the CLC limit in respect of oil pollution damage is, following the 1992 Protocol, calculated on the basis of a deemed minimum tonnage of 5,000 tons gross.

Recognising the capacity of an HNS vessel, however small, to cause serious damage, Article 6.1 of the HNS Convention (as drafted) contemplates a first tranche covering vessels up to a minimum tonnage. At the moment neither the amount nor the tonnage has been specified.

I understand that the UK Government in a paper dated August 12th, 1994 has suggested a minimum tonnage for HNS limitation purposes of 2,000 tons gross with the maximum liability ceiling being reached at between 50,000/100,000 tons gross.

Maximum liability figures being mentioned range from 100 million SDR down to 6.3 million SDR.

This raises two immediate issues.

1. Should the tonnage bands be set at a fixed minimum for vessels up to, say, 500 tons and then a fixed increase per ton up to a maximum figure? and,

2. what should be the SDR increment per ton for a vessel above the minimum tonnage?

I understand that the UK Government is chairing an Intergovernmental Working Group which is busy gathering data on the number and size of HNS carrying ships trading worldwide.

The Working Group will be analysing casualty statistics produced by other governments to see what casualty patterns emerge.

The concern is that if the limits are set low for small vessels and if they prove in practice to be a major source of claims these could put an undue strain on the industry funded Scheme. Since the present intention is that the Scheme would be based on post event funding, frequent collections under the Scheme could place tremendous administrative burdens on the Scheme's secretariat.

As regards the contemplated limits the present draft HNS Convention proposes that for vessels of the minimum tonnage, the limit shall be 5 million SDR (US 21.5 million) with increments to the fund for each ton above the minimum specified tonnage.

It is to be expected that the Intergovernmental Working Group will come up with a suggested minimum tonnage and a suggested minimum financial limit based on an analysis of the casualty statistics which they manage to obtain and on an assessment of the availability of insurance.

No doubt some allowance will also need to be made for the fact that an adequate limitation figure fixed now may not look anything like ade-

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quate ten or twelve years hence which is the earliest date by which an HNS Convention has any chance of coming into effect.

I should report that the British Maritime Law Association is working as a consultant to the British Government and the Intergovernmental Working Group on this issue.

The second problem is what is known as "linkage".

As drafted, Article 7 of the HNS Convention provides that a state ratifying the Convention may declare that the shipowners liability under the first tier is "wholly or partly determined" by its existing domestic limitation regime.

The existing regime may be the 1924, 1957 or 1976 Limitation Conventions, indeed it may be some other completely different basis of limitation which applies domestically.

If a country were simply to ratify the HNS Convention, as drafted, it will impose a higher limit in respect of an HNS incident which would sit on top of the limit for ordinary maritime claims applicable in that country. A shipowner carrying HNS would therefore need to arrange additional insurance to cover the HNS excess above the general limits.

The alternative to linkage to an existing limitation regime is to make the HNS limitation fund free standing and available to pay compensation from the ground up in respect of an HNS incident.

At the 70th session of the Legal Committee even those advocating a free-standing fund recognised the insurance related problems that this would create and appeared ready to contemplate the linkage proposed in Article 7 as currently drafted.

Linkage makes apparent sense, but it does raise one interesting problem. What if the underlying limitation regime in a particular state is the 1957 Limitation Convention and the right of the shipowner to limit his liability is in issue? Whether a shipowner may limit his liability under the 1957 Convention depends on his ability to establish that the accident did not occur as a result of his personal fault or privity.

The test under the HNS Convention is quite different.

A shipowner only loses his right to limit if it is proved against him that the damage was intentionally or recklessly caused.

A situation could therefore arise in which the shipowner could not limit his liability under the underlying limitation regime but could limit under the HNS Convention.

It has been suggested by the BMLA subcommittee that this problem could be overcome by inserting an express provision whereby parties to the HNS Convention agree that the maximum limit for HNS claims shall be those imposed by Article 6 notwithstanding the loss of the right to limit in respect of other claims under the underlying limitation regime.

A further limitation problem arises in connection with claims for death and personal injury. In an HNS incident passengers and non-passengers would be subject to different limitation regimes. Passenger claims would be subject either to the limitation provisions of the 1974 Athens Convention or to Article 7 of the 1976 Limitation Convention (or, just possibly, both). Non-passengers would have access to the global limitation fund under the 1957 or 1976 Limitation Conventions or to the increased

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limits available under the HNS Convention. The different treatment of passengers and non-passengers under the Athens and London Conventions has been a problem for some time. The introduction of an HNS Convention with higher limits simply adds to the confusion.

This cries out for rationalisation either by amendment to the existing Convention or (if this cannot be achieved) by domestic legislation in countries where conflict creates problems.

At the 70th session of the IMO Legal Committee the delegates agreed that revision of the 1976 Convention should be completed at the same time as the HNS Convention. However the Committee went on to say that the scope of revision of the 1976 Convention would extend "only to the limits and procedures for amendment". Indeed document LEG 69/4/1 (which has been deposited at IMO by the UK Government) is a draft protocol to the 1976 Limitation Convention and is confined to those two objectives.

I think that it would be a pity to miss the opportunity of tidying up the 1976 Convention both in relation to the points referred to above and in relation to the following points:

1. We should find ways of resolving the conflict (mentioned above) caused by the rights of passengers being covered by the 1976 London Convention and by the 1974 Athens Convention not to mention the general problems of the inequality of treatment of passengers and non-passengers when it comes to loss of life and personal injury claims.

2. Article 3 of the 1976 Convention relates to claims excepted from limitation and Article 3(6) needs tidying up in relation to CLC.

The CLC exclusion is currently worded as follows:

"claims for oil pollution damage within the meaning of the CLC dated November 29th 1969 ...".

The intention of this provision was to ensure that oil pollution claims would remain governed by the CLC rather than the 1976 Convention. However, the use of the words "within the meaning of ..." CLC has widened the effect of the exclusion: provided that the claim is of its nature for "oil pollution" as defined in CLC then, irrespective of whether a claim is actually made under the CLC, and irrespective of whether the claim is made against the shipowner (who is the only party entitled to limit under CLC), or some other party, no right of limitation will be available under the 1976 Convention. This could mean that where pollution claims are brought against parties other than shipowners, neither the CLC nor the 1976 Convention will provide any right of limitation.

The Convention needs to be amended so as to exclude any liability "actually incurred" under the CLC (see para 4(1) Part II of schedule 4, MSA, 1979).

3. Article 3 may need to be amended to contain an appropriate reference to the HNS Convention.

Consideration should also be given to whether there may be any claims associated with an HNS incident which fall outside the HNS Convention but in respect of which a right to limit may arise under the 1976 Convention.

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4. Should the definition of “charterer ... and operator ... of a seagoing ship” be extended to cover a “slot charterer”? (Slot charterers have an increasingly important role to play in the box trade and it is doubtful whether they can limit under the 1976 Convention).

5. Is it right to restrict the operation of the 1976 Convention to “seagoing ships”? In the UK we have extended to all ships, whether seagoing or not, the right to limit under the 1976 Convention (but not the 1974 Athens Convention).

6. Article 5 - Counter Claims, provides that where a person who is entitled to limit liability has a claim against the claimant arising out of the “same occurrence”, their respective claims will be set off against each other and the right to limit will apply only to the balance payable, if any.

This Article is designed to deal with the type of situation which arose in the case of the “Tojo Maru”. In that case the salvors ultimately saved the ship, but in the course of rendering salvage services caused her substantial damage. The salvors’ claim for salvage remuneration was met by a counterclaim from the shipowner for damage done to the vessel.

The intention of Article 5 is that should these circumstances arise again, the salvors claim (for salvage remuneration) would be set off against the shipowner’s counterclaim (for damage to the vessel) and if, on balance, the salvor owed money to the shipowner, he would be entitled to limit his liability in respect of that balance to the amount of his limitation fund.

This sequence of claim/counterclaim/limitation on balance only applies under Article 5 if the claim and counterclaim arise out of the “same occurrence”.

I suggest that in a “Tojo Maru” type situation, the shipowner’s claim arises out of the salvor’s negligent act, whereas the salvor’s claim for remuneration arises out of a separate salvage contract or engagement. If the claim and counterclaim do not, therefore, arise out of the “same occurrence”, the salvor might still find himself in the situation of the salvors in the “Tojo Maru” case, where it was held that the right of limitation, in the event of a counterclaim, should be applied before the balance between claim and counterclaim is struck, rather than after.

The matter could be placed beyond doubt by changing the words “same occurrence” to “same occurrence or transaction”.

7. The 1976 Convention should provide that it applies to all incidents occurring after the date on which it enters into force in the country in question.

The absence of a commencement date has, I am told, caused problems in several countries, including Greece.

I think that this work will keep an expanded International Working Group busy for a year or so but I am conscious of the wider remit of this Working Group.

Can we realistically work towards what might be called a Maritime Liability Convention? Can we envisage a single convention which would cover a shipowner’s liability and his rights to limit in respect of maritime claims generally, HNS claims, oil pollution claims, nuclear damage claims? Could we even envisage that liability for and limitation in respect

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of claims arising out of the carriage of goods by sea could also be worked into the same convention? Is this exercise too ambitious? As matters stand, the conventions relating to these topics have two important common features: (i) strict liability (except for Hague Visby Rules), and (ii) a right to limit (on all sorts of different bases). A project full of intellectual challenges and practical problems.

CLASSIFICATION SOCIETIES

Report of the Chairman of the Joint Working Group

Papers of

Dr. Philippe Boisson, Mr. Lars Lindfelt,

Mr. Richard M. Leslie and Mr. Brian D. Starer

REPORT and PANEL DISCUSSION CONCERNING THE JOINT WORKING GROUP ON A STUDY OF ISSUES RE CLASSIFICATION SOCIETIES

by Frank L. Wiswall, Jr.*

First through Sixth Sessions (1992-1994)

In December of 1991, the Executive Council decided that the CMI should examine whether the rights, duties and liabilities of Classification Societies could be the subject of work undertaken by or under the auspices of the Comité. Following a meeting in May of 1992 between Dr. Frank Wiswall and representatives of the International Association of Classification Societies (IACS), at which it was agreed that a solution to the problems of the Societies reached by co-operative efforts within the maritime industry was preferable to any solution which might be recommended or imposed by governments, the Executive Council in June of 1992 decided to proceed with a study of the issues by means of a Joint Working Group formed under the auspices of the CMI. Dr. Wiswall was appointed chairman of the Working Group, and invitations were issued by President Philip to IACS, the International Group of P&I Clubs (IGP&I) and the International Union of Marine Insurance (IUMI).

The First Session of the Joint Working Group was held in London on Monday 5 October, 1992 and was attended by representatives of the CMI, IACS and IGP&I.

The problem which IACS saw as most pressing was the increasing frequency of suit by third parties, whose complaint usually lay primarily against the shipowner but who also proceeded against the Classification Society as an additional "deep pocket" defendant. If this increase in the exposure of the Societies continued unchecked, the inevitable course for the Societies would be to withdraw some of their traditional services -- the result being a deterioration in maritime safety. Since the root of the matter involved maritime private litigation of civil liability, the CMI was felt better equipped than any of the inter-governmental organizations to organize a study of the issues and to formulate recommendations.

The Group considered at this First Session whether limitation of the liability of the Societies by international convention might be a viable proposition, and concluded that it would not be useful to proceed in that direction by reason of the time required; even assuming that a consensus

* Chairman of the Joint Working Group

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within the CMI and the IMO Legal Committee could be quickly reached in favour of extension of limitation to the Societies, the very mechanics of adopting an amendment to the 1976 Convention and attaining the number of ratifications necessary to bring it into force would dictate the passage of 8 to 10 years before such a limitation could become effective. The more likely vehicles for limitation of the liability of the Societies were the agreements between (a) the Societies and governments in respect of statutory surveys and certification (i.e., the work of the Societies in ensuring compliance with requirements of national and international law), and (b) the Societies and shipowners in respect of ship classification.

The Second Session of the Working Group met in London on Friday, 5 February 1993. In addition to the organizations previously participating, the Group was joined by the representative of IUMI. Before returning to the issue of the civil liability of the Societies, there was discussion of the effect of initiatives underway in IMO concerning substandard ships, in the "Paris Memorandum" States concerning increased port State control, and in the European Commission with regard to the authorization of Classification Societies to perform statutory surveys on behalf of European governments.

Regarding civil liability, there was considerable discussion of the exposure in relation to statutory surveys as compared to classification work; it was evident based upon frequency of litigation that the classification function involved greater exposure.

The Group discussed whether any parallels could be drawn with the aviation industry, with a view to applying the aviation experience to the problems under consideration. The consensus was that, in this respect, there are no useful parallels between the two industries.

The Societies are conscious that there is a need to ensure that the members of IACS in fact perform their work in accordance with its standards, and it was explained that the new IACS Quality System Certification Scheme, now in operation, will result in all IACS members having been audited by end- 1995, with IMO participating as an observer on the audit teams. A Society which does not ultimately effect such changes as may be necessary in light of the Quality System Certification Scheme would be suspended from IACS membership.

It was agreed that the issues of statutory limitation and/or regulation of the civil liability of the Societies should be deferred for future study if circumstances were to change so as to make those approaches more viable than at present. The future work of the Group should be centred upon formulation of (i) provisions for inclusion in agreements between the Societies and shipowners and governments, and (ii) a general statement of standards in performance of services by the Societies, under which various more specific existing standards (such as those employed in the IACS Quality System Certification Scheme) would be incorporated by reference and additional standards could be elaborated.

At the conclusion of the Second Session there was consensus that the format of the Joint Working Group should be maintained, with secretariat services provided by CMI, and that the Group should be expanded in membership for the Third Session to include other concerned organizations.

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The Group met for its Third Session in London on Monday, 5 July 1993. In addition to the organizations previously participating, representatives were present from the International Chamber of Shipping (ICS), the Oil Companies' International Marine Forum (OCIMF), the International Chamber of Commerce (ICC), the International Association of Dry Cargo Shipowners (INTERCARGO), and the International Maritime Organization (IMO). The Group continued its work upon the premise that the Societies will retain their individual characters, will remain competitive as between themselves, will continue to operate subject primarily to the laws of their country and province of domicile, and for these and other reasons will not adopt either a standard form or a standard wording of clauses for the agreements between Societies and shipowners. The unique problem is that, while an agreement for classification services lies solely between the Society and its paying client, the shipowner, several other parties are involved. On varying grounds, charterers, cargo owners, hull and cargo insurers and P&I clubs all have an interest in the performance of those services and consequently also have some concern with the terms of the agreements between the Societies and the shipowners. In the case of the insurance interests they have (for understandable reasons) brought pressure to bear upon the parties with regard to the content and performance of the agreements.

With regard to the liability of the Societies in connection with their work on behalf of governments, in two recent litigated cases in the United States (*Sundancer* and *Scandinavian Star*) the defendant Societies had successfully asserted their entitlement to immunity from liability under the law of the flag (Bahamas) in respect of statutory surveys. However, most States for whom the Societies perform statutory surveys and certification do not have legislation which confers immunity. The alternative is to ensure that in the agreements between the Societies and governments it is stated that the Societies function as the servants and/or agents of the Government, and are entitled to all of the defenses and protections afforded by law to the Government and its own surveyors.

With regard to civil liability in connection with ship classification, it was agreed that the primary focus should be upon provisions appearing in the agreements between the Societies and shipowners, which are customarily contained in the Rules of a given Society. While there are many similarities, there are also significant differences between the Rules of the Societies with regard to liability. For example, the duties and responsibilities of shipowners are specified with detail in some Rules and by only a general reference in others. This is because parts of the various Rules had evolved over time and in response to specific problems, and some Societies took the approach that compliance with statutory requirements was a necessary precondition to classification, rather than an obligation on the part of the shipowner. The Rules of other Societies (whether they share this view or not) state compliance with statutory requirements to be the shipowner's obligation.

The consensus within the Group is that a Society should not be liable to third parties if, without notice (actual or constructive) to the Society

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a shipowner is in default of obligations under national and/or international law and this default causes injury.

The various provisions of the Rules of the four representative Societies with regard to limitation of liability were compared. Here one finds at present very considerable differences in approach. The first approach to "limitation" is the varying attempt in all of the Rules to deny liability. Most common is the denial of any liability to non-contractual third parties. Next the denial of liability to any party for ordinary negligence on the part of the Society. Finally there is in the case of one Society a denial of liability for all negligence on the part of the Society, including gross or wilful negligence. The effectiveness of contractual denials of liability for negligence was discussed; it was generally agreed that the Rules should also deny liability for the acts of servants or agents of the Societies acting beyond the scope of their employment.

As to third parties, it appears that duties and responsibilities under the Rules for classification run only from the Society to the shipowner, and vice-versa. Other parties may have an interest in the contents of the Rules, but as these are presently constituted such extra-contractual parties are not owed any obligations under the terms of the Rules. Leaving the insurance interests aside for the time being, the question of principle is whether the Societies owe a duty of care to such third parties as passengers on the ships which they classify. Such persons are not the stated or intended beneficiaries of the Rules, and if the Societies owe them a duty of care then this duty springs from national and international law concerning the safety of ships; in other words, any legal duty of care to third parties arises in connection with statutory surveys, and not in connection with classification.

If however a third party claim arises in connection with services performed by a Society pursuant to its Rules, then the status of the Society performing the services may be crucial. For example, if the Society is the servant or agent of the shipowner then it might be entitled to all defenses against the claims of third parties to which the shipowner is entitled, including the defense of limitation of liability under national or international law.

As to limitation of liability in respect of claims against Societies by shipowners, the most common feature of the Rules is contractual limitation under differing formulas related to the fees charged by the Societies for the relevant service. It was the consensus of the Group that this was a valid approach, and that the best formula might be a first tranche of limitation calculated by reference to the fee for the relevant service times a multiple of "X", and an absolute (global) limit for claims arising out of any one incident of the highest fee for any of the relevant services times a multiple of "Y".

The Group began a discussion which took as its focus the problem of duplication of surveys, arising because of the uniquely indirect relationship of the Societies with the insurers. A basic issue is whether the historical relationship, in which a Society performs services according to requirements set by the insurer but performs them pursuant to a contract with the insured, needs to be reexamined.

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The Group met for its Fourth Session in London on Friday 7 January 1994. The Oil Companies International Marine Forum (OCIMF) declined the invitation to attend this and future sessions, as it felt that their interests would be adequately represented by ICS and ICC. IMO, as an Inter-Governmental Organization, was invited to attend in the capacity of an observer.

A first draft of clauses for insertion into agreements between the Societies and shipowners and between the Societies and governments was examined. The intended effect of these clauses is to minimize or limit the liability of the Societies. The view was however given by the representatives of the CMI that limitation is a palliative which in the long run cannot be an adequate response to the problem of the Societies' exposure to civil liability. In this view the ultimate answer to the Societies' exposure can only be to attack the problem at its roots in a preventive manner. It is the circumstances which give rise to these claims which are at the root of the difficulty. The problem is not simply one of clever lawyers looking to the Societies as an additional "deep pocket" for recovery of claims; the problem is also that what the Societies do, and how and on whose behalf they do it, is not expressed in any uniform way or in words which the general public can understand. Demonstrated adherence to published standards — provided they were adopted by a fairly broad representation of the shipping industry as a whole and not merely by the Societies themselves — would be *prima facie* evidence that the Society concerned had not been negligent, and a claimant would then have to prove either that the Society had not complied with the published standards or that the standards were so obviously deficient in the material respect that the Society could not reasonably have relied upon it.

All of the participants recognized that it was now necessary to try to find a more permanent solution to the problem than limitation, and all agreed that a statement of principles of conduct governing the work of the Societies should be elaborated.

The group met for its Fifth Session in London on Friday 15 April 1994. The CMI representatives presented a revised draft of Model Clauses for adoption in the Rules of the respective Societies and in agreements between the Societies and Governments, and the Working Group made a detailed review of this document. A number of proposals, including some made at the previous session and which had been drafted out for further examination, were by unanimous agreement discarded in the course of discussion. The general conclusions were that (1) with respect to surveys performed as the agents of governments, the Societies should have the same liability and/or limitation as government employees performing such surveys, and (2) with respect to classification surveys the Societies should not attempt to deny all liability for negligence, but should seek to limit their liability to a multiple of the highest fee chargeable for the service in respect of which liability arises. Additional clauses will deal with the vicarious liability of the Societies for the acts of servants and agents. Clauses designed to constitute the Societies themselves as servants or agents of the shipowner for purposes of application of the limitation provisions of the conventions have been set aside for later consideration.

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The representatives of IACS presented a draft of principles of conduct, based upon work already undertaken within IACS.

The IACS representatives also presented a digest of obligations of shipowners to the Societies with which their vessels are classed, drawn from the Rules of several Societies. The representatives of IGP&I and of IUMI agreed to supply information concerning surveys performed on behalf of insurers and P&I as these relate to classification surveys by the Societies.

The Working Group met in London for its Sixth Session on Monday 5 September 1994. All of the constituent organizations were represented. The first item of substantive work was a review of the draft principles of conduct, which the Group had already agreed should set forth standards which could be used to measure the conduct of a Society in a given case. In order to accomplish this it will be necessary to describe the areas of activity to be covered, and to set forth for each such area the standard by which the conduct of the Societies is to be measured. It was agreed that a redrafted Statement of Principles of Conduct should cover the activities of the Societies with respect to statutory as well as classification surveys, and that it should cover work performed by agents of the Societies such as non-exclusive surveyors as well as work performed by persons directly employed by the Societies. In order to achieve broad application the Principles of Conduct should apply to all Classification Societies, whether or not members of IACS. Likewise the Statement must apply equally to those Societies organized as privately-owned corporations and those owned by Governments and organized as public corporations or otherwise structured.

The Group then took up for consideration a revised draft of contractual Clauses prepared by the CMI representatives and incorporating the draft provisions on responsibilities of shipowners which had been provided by the representatives of IACS. It was reaffirmed that, in the form ultimately presented by the Group to its constituent organizations, the Clauses should stand as recommended models for use by individual Classification Societies, which could modify them as might be advisable in accordance with commercial practice or required by particular national law or regulation.

The Group's review of the Model Clauses focused primarily on the responsibilities of shipowners and the standards for exoneration from liability. As to responsibilities of shipowners, it was decided that these should be spelled out in detail even though some are duties by virtue of law -- the reason being that the performance of these duties is also for most Societies a condition precedent to classification. As to standards of liability, it was affirmed that a Society should not be liable unless its management violated the standard of reasonable care, or its servants or agents otherwise acting within the scope of employment or agency committed a deliberate act of negligence which directly resulted in damage.

The Working Group has scheduled its Seventh Session to meet in London in December, 1994, at which time it will consider redrafts of the Statement of Principles of Conduct and of the Model Clauses. The aim of the Group is to conclude the current phase of its work and to send the

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two documents to its constituent organizations before the end of 1995.

Following delivery to the 35th International Conference of an abbreviated version of the foregoing Report, four panelists presented papers on the subject of Classification Society responsibility and liability. After the papers were given, an open discussion took place, with questions from and comments by the panelists the audience.

The Working Group wishes to express its thanks to the Administrator of the CMI for promptly circulating the substantial amount of documentation which its work has required. Thanks are also due to those who have given freely of their time to participate in this work as the representatives of the Comité, on the Joint Working Group(*): W. R. Birch Reynardson, Esq., Vice-President (British MLA), Jorgen Bredholt, Esq., Titulary Member (Danish MLA), Karl-Johan Gombrii, Esq. (Member of the Board, Norwegian MLA), and Dr. Bernd Kröger, Titulary Member (German MLA).

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CLASSIFICATION SOCIETY LIABILITY: MARITIME LAW PRINCIPLES MUST BE REQUESTIONED?

Dr. Philippe Boisson*

There is now general agreement that classification societies are a driving force behind safety at sea:

- In a purely private capacity, they assign class to ships during construction and throughout their working life, thereby attesting that the vessels conform to the requirements of society rules, and enabling owners to insure them at more reasonable cost;
- They also provide a public service, by overseeing the application of international Conventions on Load Lines, Safety of Life at Sea, and Prevention of Pollution from ships, on behalf of governments; they carry out surveys and inspections, and issue the relevant official certificates.

The importance of their role in preventing risks at sea is heightened by the extent and density of their international networks of surveyors, which mean that they can take action anywhere in the world. This is true of course only of the larger classification societies, but it also makes them more vulnerable. Being generally established and recognised lays them open to legal action wherever they are. A plaintiff will be tempted to choose the forum where he is most likely to obtain satisfaction. From this viewpoint, it is quite clear that American courts continue to exert a pernicious attraction.

Attempts to cover these risks by civil liability insurance have even increased the temptation to sue classification societies. Insurability has become synonymous with solvency, a guarantee that encourages claimants to seek possible compensation in the well-lined pockets of their debtors.

The wide diversity of services they offer, their extended geographical range and potential solvency have put classification agencies at the heart of a wide-ranging argument about the scope and nature of their obligations. There has been discussion of their contractual commitments to shipowners and yards, but also their liability to third parties, hull and cargo insurers, P&I clubs and charterers, which use the information contained in registers or classification certificates.

Two earlier studies¹ drew attention to the growing seriousness of

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1. E. Langavant et Ph. Boisson: "L'affaire du naufrage de la drague *Cap de la Hague* et le problème de la responsabilité des sociétés de classification", *Le Droit Maritime Français*, mars 1981 pp. 131-145. Ph. Boisson: "The liability of classification societies in the marine industry context" in *Classification Societies*. Lloyd's of London Press 1993, pp. 1-26.

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this risk of legal complications, the dangers that it raises for the ultimate survival of classification societies, and the negative effects it has on the efficiency of their day-to-day actions. Since 1992, there have been new legal developments in the cases of the *Sundancer*, the *Nicholas H* and the *Scandinavian Star*. These legal decisions, which affect the main categories of liability (contractual liability, tort and administrative liability), need to be compared with traditional precedents. Other recent verdicts and judgements in France, the United Kingdom and the United States are also worth examining, to the extent that they call for a re-assessment of the value and purpose of classification certificates. In general, they cast a new light on the legal environment within which classification societies are currently operating. They also make it possible to draw the lines at which their rights begin and their obligations end.

I - Classification society liability in relation to clients

When a classification society is performing its various services, its clients, namely shipowners and shipyards, may allege its liability. The conditions of application of such liability vary considerably depending on national case law, unlike the fundamental principles, which have remained the same for many years.

A - Traditional approach to contractual liability

A client can recover for losses caused by the poor performance or non-performance of contractual obligations by its supplier. In turn, suppliers have various means of defence, in order to escape having to bear liability.

1 — Conditions of involvement of liability

a) Foundations of liability

Under French law, the concept of contractual liability is based on article 1147 of the Civil Code, making any contractor liable for faults and negligences committed during performance of the obligations incumbent on him. Clearly established jurisprudence prevents the contractor from claiming tort liability, whenever the injury resulted from a fault committed during performance of the contract under the principle of non-concurrence of liabilities².

The approach is different in common law, which under certain circumstances can impose implied obligations of performance on professional agents. American law, for instance, allows claims against a contractor for both contractual and tortious liability. There are three main forms of contractual liability: breach of contract, gross negligence, and

2. Mazeaud: "Leçons de droit civil" — Tome II 1er volume. Obligations. Editions Montchrestien 1969 pp. 338-340.

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negligent misrepresentation. As regards tort, reliance is placed on the theory of implied warranty of workmanlike performance, better known as the “Ryan doctrine”³.

b) Content of obligations

French jurisprudence has traditionally regarded classification societies as information agencies owing their clients an obligation of means. “Means” are taken to mean a general obligation of care and diligence, and not the attainment of a particular goal⁴.

American magistrates have not attempted to define the various contracts between classification societies and their clients. On the other hand, they refer to such commitments in defining the content of obligations.

Obligation to shipyard

In *Continental Ins Co v. Daewoo Shipbuilding*, the New York Federal Court considered that the obligations of the classification society were governed by the contract signed with the shipyard. This stipulated no more than care and attention in reexamining drawings and surveying construction, before the issue of certificates stating that the ship conformed to the society’s rules⁵.

Obligation to shipowner

Jurisprudence has recognised two fundamental duties arising from classification:

- “the first duty is to survey and classify vessels in accordance with rules and standards established and promulgated by the society for that purpose;
- the second duty is that of due care in detection of defects in the ships it surveys, and the corollary of notification thereof to the owner and charterer, if such defects were neither apparent nor already known to the owner⁶”, an obligation to be interpreted in the limits of its functions.

When the ship has suffered damage through an accident at sea, the classification society owes certain duties a) determination that a ship conforms to certain standards set by the society, b) inspection to make sure that the rules and standards continue to be met, c) inspection of a damaged ship to determine whether it still meet class standards and if not, what must be done to bring the ship up to class standards⁷.

3. *Ryan Stevedoring Co v. Pan Atlantic Corp.*

350 U.S. 124, 1956. A.M.C. 9 (1956).

4. A. Tunc. “La distinction des obligations de résultat et des obligations de diligence”. *La Semaine Juridique* 1945, I, 449 n° 2-6.

5. *Continental Insurance Co v. Daewoo Shipbuilding and Heavy Machinery Ltd, Daewoo Shipbuilding and American Bureau of Shipping*, USDJ, New York, 18th July 1988. 86. Civ 8255 (RLC).

6. *Affaire du Tradeways II in. Great American Insurance Co. v. Bureau Veritas*, 338 F Supp 999, 1972, AMC 1455 (S.D.N.Y.) 1972 aff’d, 478 F. 2d 235, 1973, AMC 1755 (2d Cir 1973).

7. *Gulf Tampa Drydock Co v. Germanischer Lloyds*, U.S. Court of Appeals, 5th Circuit, Jan. 20, 1981 in Federal Reporter, 2nd Series, 874 et U.S. District Court, Tampa Division, 18th June 1981.

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When liability is involved outside the contractual context, American jurisprudence refuses to apply the Ryan doctrine to classification societies, and considers them to owe their clients an implied warranty of workmanlike performance. Several arguments in the *Tradeways II* case were accepted in support of this position⁸:

- the classification society seldom if ever creates a dangerous situation through its actions or function;
- it is incapable of rectifying faults in the ship, and can only record them and notify the shipowner or his representative;
- responsibility for the ship's seaworthiness rests on the shipowner, and this cannot be delegated;
- placing this obligation on the classification society, which has only episodic contact with the ship, during annual surveys, would give the shipowner, who is always present, an opportunity to elude liability in many cases;
- the effect of any right to claim against the society which has classed the ship would make it the virtual insurer of any ship it surveys and certifies;
- such liability is not commensurate with the inspections it can perform, and corresponds neither to the intent of the parties, nor to the fees charged.

2 - Means of defence

The classification society can exclude its contractual liability through special clauses inserted in its general conditions or rules. It can also claim that its client has committed a fault.

a) Liability clauses

Exclusion clauses inserted in classification contracts are usually accepted by the courts.

In France, the classification society can limit its liability, except in cases of wilful misrepresentation or gross negligence⁹.

In the United Kingdom, the Unfair Contract Term Act limits the effect of exemption clauses to purely material damage. They are acceptable provided that they are reasonable¹⁰.

8. S. Barton: "Possible Third Party Liability of the classification society: recent developments" *Maritime Cyprus* 1995.

9. - Tribunal de Commerce de Marseille, 10 février 1926, DMF 1926, 234.

- Cour d'Appel d'Aix, 15 fev 1927, DMF 1927, 196.

- Cour d'Appel de Tunis, 23 fev 1955, DMF 1956, 87 et *Jurisclasseur Périodique* 1955, 8810.

- Cour de Cassation, Chambre commerciale, 15 juin 1959. *Dalloz* 1960.97 note R. Rodière.

- Cour d'Appel de Paris, 12 dec 1968, DMF 1969, 223.

- Chambre Arbitrale Maritime de Paris. Sentence n° 115. 5 avril 1974. DMF 1974, 635.

- Tribunal de Commerce de Marseille, 6 jan 1978, DMF 1978, 510.

10. R. Lawson: "Exclusion Clauses", *Oyez Longman*, London 1983, pp. 129-131.

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In the United States, certain courts have expressed doubt “whether the broad exculpatory clause contained within the certificates issued by a classification society is legally enforceable”¹¹.

b) Contributory negligence

The classification society can avoid liability if its client fails to comply with certain legal or contractual obligations.

The shipowner’s main contractual obligation, included in all rules, is to inform the classification society of alterations, maintenance work, damage and failures that could affect the ship’s class. Any failing in this essential duty prevents the surveyor from carrying out his work properly, and therefore justifies the absence of any liability on his part in the event of the classed ship suffering an accident¹².

The law may also impose certain constraints, which have a direct influence on the role and liability of classification societies.

Under French law, for example, the shipyard is always responsible for guaranteeing any latent defects that have escaped its attention during construction, even if the ship is being surveyed by a classification society¹³.

Under the Hague, Hague/Visby and Hamburg Rules, the shipowner must exercise “due diligence” in making the ship seaworthy. According to English jurisprudence, this legal obligation cannot be delegated to a third party: in the *Muncaster Castle* case, the House of Lords considered that negligence by a classification society surveyor in no way relieved the shipowner of his liability¹⁴.

B - Confirmation of traditional approach

Two recent cases, the *Sundancer* and the *Niobe*, have confirmed the traditional principles that govern relations between the classification society and its shipowner clients.

1. The “Sundancer” case and seaworthiness obligation

a) Facts and proceedings

In 1984, the *Sundancer* was shipwrecked off British Columbia, after running into a rock that was awash. The shipowner and operator sued the American Bureau of Shipping in the Southern District Court in New York, for various faults and forms of negligence allegedly committed during conversion of this former ferry into a luxury cruise ship, in Sweden.

11. *In the Oil Spill by the Amoco Cadiz* 1986, AMC 1945, 1951-54.

12. *Affaire du Compass Rose III*. Tribunal de Grande Instance d’Avranches, 12 jan 1982. Cour d’Appel de Caen, 12 jan 1983 et Cour de Cassation, Chambre criminelle 8 oct 1985 (décisions non publiées).

13. M. de Juglart: “Le vice de la chose en droit maritime: essai de synthèse”. DMF 1982 pp. 3-14 et 67-74.

14. 1.L.1 LR 1961. 57 DMF 1963 p. 246. 1.L.1 LR 1962 p. 582 Confirmed by House of Lords. 15th Sept 1963.

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Shortly before the accident, the ABS had issued the *Sundancer* with its classification certificates and international safety certificates on behalf of the flag state, the Bahamas. The shipowner claimed that the classification society had failed to detect and report faults affecting the watertightness of the ship, the presence of holes in a bulkhead and the absence of valves in the grey water piping system.

Following five years of legal proceedings, Judge Knapp issued a summary judgement on 21 April 1992, followed on 31 July 1992 by a Federal Court judgement¹⁵ that ABS did not bear liability. This decision was confirmed by the Second Circuit Appeal Court on 15 October 1993¹⁶. In April 1994, the Supreme Court refused to examine the whole case, on the grounds that no conflict of jurisdiction or constitutional problem had arisen¹⁷.

b) Investigation of the case

The *Sundancer* case offered American jurisprudence an opportunity to recall the legal principles that govern the role and liability of a classification society towards a shipowner. It also cast a new light on several aspects of the client-supplier relationship.

Value of classification certificate

The American judge began by reasserting the principle by which the shipowner cannot regard the classification certificate as a guarantee of sound vessel construction. The principle is based on several considerations:

- The huge disparity between the fees collected by ABS (USD 85,000) for its services, and the amount of damages claimed by *Sundance* (USD 264 millions), provides clear proof that such a result was not intended by the parties to the contract. The classification sector could not survive under such conditions, which would make it assume risks normally covered by insurance companies.
- The shipowner, not the classification society, is ultimately responsible for actions performed under his control on board ship. In the case of the *Sundancer*, *Sundance* retained full responsibility for the conversion, repair and maintenance of the ship. This requirement is completed by maritime law requirements, which place a non-delegable obligation on the shipowner to supply a seaworthy vessel for the purposes of transport by sea.

A striking illustration of this situation can be offered in the motor vehicle sector. A person applying for a driver's licence does not thereby seek assurance of an ability to operate an automobile but merely permission to do so; and that a car owner procuring an inspection sticker from a licensed garage does not seek assurance that the automobile is safe, but

15. U.S. District Court, Southern District of New York, 31 July 1992, *Sundance Cruises Corp and SCI Cruise, Inc. v. The American Bureau of Shipping*.

16. U.S. Court of Appeals for the Second Circuit. 15th Oct 1993.

17. Lloyd's List, 12 and 13 April 1994.

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merely permission to operate it on public highways. The same applies to the classification society, which does not guarantee the safety of a ship, but merely permits its owner to take advantage of the insurance rates available to a classed vessel.

Classification society obligation

The American judge was to use this argument to issue a restrictive interpretation of ABS obligations towards Sundance.

To begin with, the shipowner had not asked the classification society to supply specific information for his guidance. The charge of negligent misrepresentation could not bear up.

In addition, ABS had in fact no implied warranty of workmanlike performance. The contract nowhere mentioned that the classification society agreed to undertake structural alterations to the ship, nor to guarantee that the naval architects, contractors and shipyards chosen by the shipowner would carry out their commitments properly, nor to assume any liability if the ship proved to be unseaworthy. The Ryan doctrine therefore could not apply, nor any implied obligations be recognised in the classification process.

Absence of proven gross negligence

During the trial, Sundance submitted a whole series of evidence aimed at establishing gross negligence by the classification society: internal disorganisation, absence of checklist, work overload for the surveyor in charge of inspections, fraudulent concealment of evidence, and issuance of a backdated certificate.

In the absence of adequate proof, these charges were not accepted by the judge. In addition, the fact that ABS did not succeed in detecting leaks in the Sundancer a determining factor, insofar as these deficiencies had already escaped the vigilance of four survey bodies, including two other reputable classification societies, Det Norske Veritas and Lloyd's Register, and two official organisations, the Swedish maritime administration and the Canadian Coastguards.

For action against the classification society to be successful, it would have been necessary, first, to provide proof of a fault committed in the performance of its services and, second, establish that such a fault was the cause of the shipwreck. Despite a very long period of investigation by discovery, the plaintiff could not meet the first requirement of the accusation procedure. It would have been just as hard for the plaintiff to establish any causal link between the fault and the occurrence of the accident, because of the fact that, after the shipwreck, the Sundancer still navigated under limit conditions of damage stability.

2 - The "Niobe" case and the obligation to notify

Although it did not involve the liability of the classification society, the *Niobe* case is a useful reminder of the shipowner's obligations towards the society in the event of sale of a ship.

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The dispute arose following the 1987 sale of the *Niobe*, formerly the Apache, by Tradax Ocean Transportation SA, to Niobe Maritime Corporation. A survey carried out in Spring of the previous year had not revealed serious defects affecting the automation system in the engine room of this bulker. The sale contract was signed on 9-10 May 1987, engine room equipment was inspected by the classification society four days later, and the ship was finally delivered to Niobe on 26 May.

Following delivery, the purchaser discovered defects in the ship automation system, and immediately submitted the case to arbitration, in an attempt to cancel the sale. Niobe Corporation was successful as regards three of the four questions raised, but lost its claim concerning the vendor's obligations regarding the state of the engine room and boilers. The contract had been drafted in the terms of the Norwegian Sale Form MOA (1983 model revised), clause 11 of which states:

"The seller shall notify the classification society of any matters coming to their knowledge prior to the delivery which upon being reported to the classification society would lead to the withdrawal of a vessel's class or the imposition of a recommendation relating to her class".

Finally, the question arose as to the date on which such an obligation took effect. There were three possibilities:

- date of signing of the contract;
- date of last relevant survey, in other words the one during which the defective equipment was examined by the classification society;
- finally, another date, such as the date of survey by the purchaser.

The arbitrators decided in favour of the first of these possible dates, namely when the contract was signed. The purchaser appealed against this decision, in the commercial court of the Queen's Bench Division¹⁸, which preferred to take the second possible date into account. The judge explained his decision by indicating that the obligation laid on the vendor to notify the classification society was independent of the purchaser's similar obligation. His purpose was to inform the society of anything unknown to it, and which could result in withdrawal of class or a recommendation. Unless informed in this way, concluded the judge, the classification society would have no knowledge of what had happened since its last survey.

Finally, the Appeal Court, in a decision handed down on 8 February 1994¹⁹ adopted a different interpretation of clause 11, as forming part of the contractual undertakings given by the vendor at the date of the contract. The expression "coming to their knowledge" could not refer only to matters known at the date of the contract.

The Appeal Court decision, which aroused very sharp reactions in the

18. *Niobe Maritime Corporation v. Tradax Ocean Transportation SA*, High Court of Justice, Queens Bench Division, Commercial Court. 2 Lloyd's Rep. 52 (1993).

19. Court of Appeal 8th Feb 1994. Lloyd's Rep. Part 3 (1994) Vol. 1 - 487.

United Kingdom²⁰, was the subject of an ultimate appeal to the House of Lords. It appeared to leave the field wide open to unscrupulous vendors.

Regardless of which date the House of Lords stipulates as the starting point for the purchaser's obligations, the legal debate has recalled the fundamental requirement to warn the classification society of defects affecting any ship. It is regrettable that this requirement, which now appears in all classification rules, should have been dropped from the revised version of the new Norwegian Sale Form, adopted in 1993.

II - Classification society liability in relation to third parties

Most of the disputes to which classification societies are party involve tort. This form of liability arises by definition outside any contract, when negligences have occurred that have caused harm to third parties. Most of the time, this category includes professionals with whom the shipowner is in contact, such as hull insurers, P&I clubs and charterers. It may also include the purchaser of a classed ship, or the victim and his rightful representatives, following an accident in which the actions of the classification society have been called into question.

A - Traditional approach of tort liability

The mechanisms governing the concept of tort liability vary depending on the legal systems in different countries. A distinction is usually made between case law systems and those based on Roman law.

1 - French jurisprudence

The French system of tort is based on article 1382 of the Civil Code, according to which anyone who has committed an injury is responsible for providing reparation. The principle is particularly severe for classification societies during sale of a ship: the purchaser usually considers that he can rely on the accuracy of information supplied by the classification society to its client, the vendor. The classification society could be held liable for any fault or negligence committed in the course of assignment of class, even if the vendor has acted fraudulently. The classification society cannot rely on exclusion clauses in the contract, which have no validity for third parties.

The classification society retains at most the possibility of relying on the theory of the "contractual whole", according to which its obligations to third parties have to be evaluated with reference to previous contractual commitments²¹.

20. - Seatradeweek News front 22-28 Apr 1994.

- Loyd's List, 4 May 1994.

- Fairplay, 16 June 1994.

21. Cour de Cassation, 21 Juin 1988. Dalloz 1989, 5.

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2 - English jurisprudence

In the United Kingdom, extra-contractual liability is based mainly on the existence of a “duty of care”, incumbent on certain persons under certain circumstances.

The conditions under which classification societies may be required to assume the duty of care were laid down in the case of the *Morning Watch*. The dispute involved the sale in 1985 of a yacht which, following the transaction, proved to suffer from serious defects, making it unseaworthy, despite the existence of a fully valid certificate of classification. The purchaser of the *Morning Watch* sued Lloyd’s Register for compensation for the economic injury suffered, on the grounds of its failure to observe its duty of care.

The English judge laid down three conditions for recognition of the duty of care:

- foreseeability: could the classification society foresee that the purchaser of the vessel would be influenced by the results of its actions at the time of purchase?
- proximity: was the relationship between the classification society and the purchaser close enough to create a duty of care?
- fairness and reasonableness: was it fair and reasonable to impose a duty of care on the defendant under the circumstances?

In a judgment delivered on 15 February 1990²², the High Court refused to accept the arguments of the purchaser of the *Morning Watch*. According to the court, there was no sufficient proximity between the purchaser’s purely economic loss and the role of the classification society. With its charitable status, Lloyd’s Register was acting primarily for the benefit of the community, to ensure safety of life and property at sea or on land. The primary purpose of classification, in fact, was not to protect the many and diverse economic interests of those involved in shipping.

3 - American jurisprudence

A classification society’s tort liability towards third parties can be claimed under United States law, on the dual condition that negligence can be proved, and causality shown between the fault and the harm suffered.

It is in fact the absence of any causal link that prevented the District Court of Louisiana from finding Bureau Veritas liable following the shipwreck of the *Pensacola*. In a decision issued on 4 June 1973²³, The Court suggested that the surveyor might have performed some surveys negligently in failing to gauge steel plating and in failing to inspect internally certain of the double bottom tank. However the Court considered that the insurer, who was the plaintiff, had failed to establish any negligence in the

22. High Court of Justice, Queens Bench Division, Commercial Court, 15 Feb 1990, *Marcola Marine Corporation v. Lloyd’s Register of Shipping*.

23. *Steamship Mutual Underwriting Association Ltd. v. Bureau Veritas*, 1973 AMC 2184.

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inspection of the cargo holds and the evidence did not show that the proximate cause of the sinking was a defect which was discoverable by a completely adequate survey. The presumption of unseaworthiness that arises following an accident at sea cannot be laid at the feet of an organisation that classes the ship but is not in control of it.

B - Recent jurisprudence in tort liability

1 - France: the "Elodie II" case

It was in connection with the sale of this small Moroccan coaster that the classification society's tortious liability was claimed by its new French owner. During the second half of 1988, the classification society had carried out a special survey of the ship and issued the corresponding certificates. At the request of the future purchaser, the Bureau Veritas surveyor in Antwerp surveyed the ship on 28 September 1990. The classification certificate was endorsed, to include several recommendations, one of which concerned certain repairs to be done by 16 October. The deed of sale was signed on 1st October. On 17 October, the French maritime authorities inspected the ship in Lorient, and withdrew its navigation licence. Following an estimate of the prohibitive cost of overhaul, the *Elodie II* was sent to the scrapyard.

The purchaser sued Bureau Veritas for damages, for the financial injury suffered, for faults committed in maintenance of class during the special survey of 1988, an intermediate survey carried out in 1989 following a collision, and the pre-sale survey in 1990.

In its judgment of 26 June 1992, the Nanterre Commercial Court did not take into account the suspension of class before the sale, considering that this was not the concern of the purchaser. Adopting the conclusions of the legal expert, the judge considered that the defects had obviously existed for several years, but that none of the classification society's surveys had been able to detect them. The Court concluded that the class had been wrongly assigned and maintained by Bureau Veritas, which was sentenced to provide compensation, but only for the direct harm suffered by the purchaser. Both parties appealed against this verdict.

2 - United Kingdom: the "Nicholas H"

The problem of a classification society's responsibilities to the owner of a ship's cargo was raised in the United Kingdom in the famous case of the *Nicholas H*.

Early in 1986, this bulker loaded a cargo of lead and zinc in South America, for Italy. En route for Europe, the ship was forced to cast anchor off Puerto Rico, following the discovery of cracks in the hold. On 22 February, a surveyor from Nippon Kaiji Kyokai (NKK) went on board, examined the damaged structure, and ordered that repairs should be carried out

24. - Le Quotidien juridique, 28 janv 1983 n° 8.
 - DMF, Janvier 1994, 19.

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as quickly as possible, on pain of suspension of class. The surveyor later went back on his initial decision, and on 2 March authorised the ship to continue its voyage to Italy, where final repairs would be carried out once the cargo had been unloaded. A week later, the ship sank in the Atlantic, fortunately without any loss of life.

Following the accident, Marc Rich, owner of the cargo, sued the owner of the *Nicholas H* and the classification society, for compensation for the loss, put at USD 5.5 million. The dispute was settled out of court, and legal action against the owner dropped, for USD 500,000. Rich then claimed the balance of the alleged loss from the classification society.

An initial judgment on 2 July 1992 by the Commercial Court of the Queen's Bench Division²⁵ considered that the classification society had failed in a safety obligation, on the grounds of the very close degree of proximity between the cargo owner and the surveyors, whose decisive influence on the shipowner could be regarded as a form of control²⁶.

On appeal, the English magistrates overturned this decision, declaring that the classification society had no duty of care concerning the interests of the cargo. The judgment was delivered on 3 February 1994, arousing much comment, despite the unanimous opinion of the three judges on the issues raised²⁷.

a) Conditions of duty of care

Contrary to the opinion of the High Court, the Appeal Judge, Lord Justice Saville, considered that the accident was not sufficiently foreseeable, and that two other factors should be taken into account: the nature of the relations between the parties, and whether it was fair, just and reasonable to impose a duty of care.

These three requirements should not be treated separately, but provided a convenient approach to the fundamental questions that have to be asked in each case, to determine the existence of the duty of care. The magistrate's judgment was marked by caution and pragmatism; in the end, he accepted that everything depends on the circumstances of the case.

b) The classification society has no duty of care towards the cargo owner

Lord Justice Saville accepted certain of the plaintiff's arguments, claiming that the classification society surveyor had been negligent in his functions, and that the risk of cargo damage or loss was foreseeable. However, he felt that other more important factors had to be taken into account.

25. High Court of Justice, Queens Bench Division. Commercial Court, 2 July 1992, *Marc Rich and Co AG and others v. Bishop Rock Marine Co Ltd and others (The Nicholas H)*, (1992) 2 Lloyd's Rep. 481.

26. Sur ce jugement: R. Harling: "The liability of classification societies to cargo owners. the *Nicholas H*". Lloyd's Maritime and Commercial Law Quarterly. 1993 Part I, Feb. 1993, pp. 1-8.

27. - A. Moore: "The balance between rights and duties is weighed again" Lloyd's List 4 March 1994.

- C. Sheppard: "Class Act". Fairplay 26th May 1994.

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Absence of fair, just and reasonable nature of duty of care

The cargo of the *Nicholas H* was being carried under bills of lading that had to conform to the Hague/Visby Rules. These provide an internationally accepted code governing relations between the shipowner and the owner of the goods being carried. The Hague Rules form an inextricable combination of obligations and responsibilities, laws and immunities, limitations on the amounts of recoverable claims, prescriptions, conditions for evidence, compensations and freedoms, all relating to the transport of goods under bills of lading.

The judge did not consider it fair, just and reasonable to interfere with the balance of this consistent and universally accepted system of law, which places the primary duty of care on the shipowner, not on the classification society, which is foreign to the contract of carriage, and which cannot benefit from the limitation of liability.

Absence of proximity

Neither was Lord Justice Saville convinced that there was any relation of proximity between the owner of the goods and the classification society. No contract of any kind existed between them, nothing to indicate that the shipper had done any more than rely on the shipowner to take care of his property.

Once again, the judge considered that there was a satisfactory balance of rights and obligations between the main parties to the contract of carriage, at an international level, and that there was no good reason to alter this system by imposing an obligation on the classification society (without any corresponding benefit in return) that fundamentally rests on the shipowner.

III - Classification society liability acting on behalf of Administrations

In the course of its statutory functions of applying international and national regulations, a classification society may find itself liable in several ways:

- It applies primarily in relation to the state that has delegated powers to it to carry out surveys and inspections of ships sailing under the national flag, and issue safety certificates. In French law, this is an administrative liability, involved when a complaint is made against deficiencies in the functioning of a public service, even when provided by a private entity. Such cases of liability come within the attributions of administrative jurisdictions.
- Civil liability may be involved in relation to clients, namely shipowners or shipyards, but also to third parties, if faults or negligences have been committed in performance of a statutory service. In this case, the classification society enjoys certain protections granted by the flag state.
- Finally, if the negligence amounts to a criminal offence, the classification society surveyor may be charged before criminal jurisdictions. This is a personal liability, which cannot be covered by insurance.

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A - Administrative liability

Relations between flag states and classification societies were for long governed in the very simplest way, by a degree which granted a number of individually designated bodies the duty of carrying out delegated statutory services.

1 - Approval agreements

In 1978, Liberia was the first country to conclude a memorandum of understanding with the leading classification societies. This was intended to define all the legal relations between the parties, and organise the most effective possible system of cooperation and exchange of information on safety matters²⁸.

During the Eighties, such agreements were reached with other flag states. They went further, making provisions for a full system of liability. Several types of clauses were used, in some cases providing for the classification society to be liable for minor negligence, in other cases for gross or deliberate negligence. There could also be clauses concerning conciliation or arbitration procedures.

Certain approval agreements now provide a comprehensive, consistent legal system, capable of preventing any misunderstanding or disagreement between delegator and delegatee, setting the maximum amount of possible damages, determining whether the liability incurred includes direct and indirect harm, and arranging for legal aid in order to adopt a common defence.

2 - Harmonisation of approval agreements

More than a hundred governments have now delegated powers to major classification societies. The great diversity of the accompanying legal systems militates against the efficiency of statutory actions. Since 1980, societies belonging to the International Association of Classification Societies (IACS) have been collaborating in order to harmonise their position on approval agreements.

This action was recently reinforced by a dual initiative. In its Resolution A.739 of 4 November 1993, IMO has laid down guidelines for the authorization of organizations acting on behalf of the Administration. This text has been completed by an MSC/MEPC draft circular, appendix 4 of which contains a model agreement. Paragraph 6.6 allows an Administration to seek from the classification society compensation up to but not exceeding the amount of financial liability as defined in the standard terms and conditions of the Classification Society. Another provision enables the delegat- ed society to limit its liability in the contracts it signs with its clients.

The second initiative comes from the Commission of European Com-

28. B. Jegou: "La responsabilité des sociétés de classification agissant par délégation des pavillons (étude non publiée) 1993.

munities, which recently submitted a draft directive on common rules and standards for ship inspections and survey organisation. This text requires a formal and non-discriminatory agreement to exist between states and classification societies; however, it does not contain any liability clause.

B - Legal protection afforded by the flag state

In addition to liability exemption and limitation clauses inserted in contracts, classification societies may enjoy certain legal protections afforded by the flag state. One of the most important is immunity of jurisdiction, preventing claims against the state and its agents before the courts of another state. Two recent cases, the *Sundancer* and the *Scandinavian Star*, have demonstrated the effectiveness of such protection.

1 - "Sundancer"

The Appeal Court decision of 15 October 1993, already mentioned, contains two interesting provisions.

The decision indicates that Bahamian law applies to the classification and certification contract for the *Sundancer*. Ultimately, there were no factors allowing any other jurisdiction to be chosen. The torts with which ABS surveyors were charged had taken place in Sweden, New York, Miami, Mexico, California and on the high seas. The plaintiff was a company registered in Panama and controlled by Swedish capital. At the time of the accident, the ship was in Canadian waters. Ultimately, only the flag state provided a stable connection.

The choice of the flag, in fact, had not been made by ABS but by the plaintiff, for reasons of personal convenience. It was therefore seen as fair that the benefits offered by Bahamian law should also be enjoyed by all those carrying on activities under its system. By virtue of this law, then, the judge granted immunity of jurisdiction to the classification society which had acted under powers delegated by the government of the Bahamas.

2 - "Scandinavian Star"

On 7 April 1990, the *Scandinavian Star*, a former cruise vessel converted into a car ferry, caught fire off the coast of Denmark, during the crossing from Oslo to Frederikshavn. The fire soon spread and got out of control. The casualty list was particularly serious: 159 dead, and many injured among the 324 survivors.

Following the catastrophe, several legal actions were taken: criminal charges against the shipowner, shipping company director and Norwegian captain before the maritime and commercial Court in Copenhagen, and a civil liability suit in Miami Federal Court. This second case was against Lloyd's Register, whose American surveyor had carried out surveys for the purposes of classification and delivery of statutory certificates since 1987. The plaintiffs argued that the classification society had committed a series of negligences, by failing to report deficiencies that could have contributed to the rapid spread of the fire on board.

In September 1992, the Miami federal judge referred the case to a State

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Court, which dismissed the claims against Lloyd's Register, on the grounds of immunity and forum non conveniens ²⁹.

As regards the first of these two grounds, it provides confirmation that the flag state law, in this case Bahamian law, applies to a dispute, and that it confers immunity on the classification society that has acted on behalf of the government of that state.

The second reason, involving the principle of *forum non conveniens*, which enabled the American judge to set aside his own competence in favour of a more appropriate jurisdiction. There were many factors in support of this position:

- all the witnesses and evidence were located in Scandinavia, most documents were written in Scandinavian languages, the accident had occurred in Scandinavia, and the plaintiffs were nearly all Scandinavian;
- states in that region were most concerned by this dispute, which involved their nationals and the local maritime industry;
- Danish and/or Norwegian courts both offered suitable and adequate fora.

The case of the *Scandinavian Star* reveals the now common practice of "forum shopping". The very high levels of damages and compensation awarded by United States courts explains the attractions of claims in that country. They also provide a flagrant illustration of the serious risks incurred by all economic agents acting in that country.

C - Criminal liability

Although it is seldom invoked, the classification society surveyor can be charged with criminal liability when he is acting within the framework of an assignment from the authorities, just as when his actions are purely private.

Surveyors, and officials who have carried out safety inspections of ships, are sometimes held liable following a fatal accident. In France, such charges are based on article 221-6 of the new Penal Code, which punishes anyone who, through negligence, error or failure to observe rules, has been guilty of manslaughter.

Since the decisions handed down in connection with the shipwreck of the dredger *Cap de La Hague* in 1978 and 1981, French criminal judges have shown little concern for the liability of classification societies. Legal precedents on the matter arise from two cases, the *Compass Rose III* and the *Snekkar Arctic*.

In the first of these cases, the surveyor was criticised for his lack of curiosity, and for granting an extension of mark without inspecting the ship, shortly before it was wrecked in a storm in the North Sea. The Lower Court in Avranches, the Appeal Court in Caen and the Supreme Court unanimously sentenced the shipowner and charterer for insufficient care

29. Circuit Court of the 11th judicial Circuit in and for Dade County, Florida 4th June 1993. *Humberto Argondona v. Lloyd's Register of Shipping*.

in work on converting the *Compass Rose III*, not reported to the classification society³⁰.

In the *Snekkar Arctic* case, the shipbuilder, maritime affairs official heading the survey commission that authorised the ship to sail, and the Bureau Veritas surveyor were charged following the wreck of this fishing trawler in the North Atlantic. The Lower Court in Dieppe, in a decision on 7 December 1993, considered that the determining cause of the accident was the flooding of the vessel through the waste-disposal pipes, that it was not because of their design or failure to inspect them, but because of how they had been used by the crew. After noting numerous instances of incompetence by the crew, the judge drew the necessary conclusions, and discharged the defendants³¹. The plaintiffs have taken the matter to the Appeal Court of Rouen.

In Italy, the Appeal Court in Genoa also reached an acquittal verdict on 21 June 1991, in the case of the *Tito Campanella*. While accepting that this old bulk carrier showed certain deficiencies at the start of its voyage, Italian magistrates did not find any causal link between the facts that the RINA surveyor might have recorded while surveying the ship in September 1983, and its shipwreck in January 1984³².

CONCLUSION

In some quarters, there has been no hesitation in questioning the value and usefulness of classification, in the wake of the *Sundancer*, *Scandinavian Star* and *Nicholas H* verdicts, regarded as over-favourable to classification societies³³. This controversy should not be misinterpreted, leading to the assumption that their functions are being eroded: on the contrary, this new jurisprudence provides an exact definition of the place of classification in the maritime sector.

In deciding where to draw the line between the obligations and liabilities of classification societies, English and American judges have relied on the major principles of maritime law, universally recognised and accepted. One of these is that the shipowner is under an absolute obligation to provide a seaworthy ship. He remains solely responsible for the maintenance of his vessel, over which he exercises permanent control. He cannot delegate this task, so vital to safety at sea, to a classification society, whose sole duty is to attest that the ship conforms to its rules or the requirements of international conventions.

This fundamental principle, one of the cornerstones of maritime law,

30. Voir note 12.

31. Tribunal de Grande Instance de Dieppe. 1er dec 1993, (décision non publiée).

32. D'après les notes communiquées gracieusement par M. Fernando Attoma Pepe, membre correspondant de l'Association Française du Droit Maritime.

33. "'Sundancer' case raises doubts". Lloyd's List, 18th April 1993.

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explains the reluctance of English judges to admit that a classification society is under any safety obligations to third parties, and of American judges to place any implied warranty of workmanlike performance on such societies.

Any change in this legal set up would result in an unfair redistribution of the burden of compensation following an accident at sea³⁴. This transfer of obligation would be to the advantage of shipowners, who have a primary role in ensuring safety of transport at sea, and be to the detriment of classification societies, who are involved in a secondary capacity, but without the benefit of any protection under maritime law.

Another equally unfortunate consequence would be a change in their functions. Since they were first set up, classification societies have been responsible for informing the maritime world about the condition of ships. No-one now contests the major influence they exert in this area, with limited means, based mainly on the abilities of their surveyors and the international spread of their networks. The attacks directed against them in a period of economic hardship could result in a substantive change in their role: instead of being simple reporters, they would become guarantors, a kind of back-up insurers, very convenient to sue when those whose job it provide such guarantees try to evade their responsibilities.

The courts have rightly refused to sanction this distortion in contractual commitments, of which classification societies would have been the first victims. The increase in the volume of inspections that would result from this diversion of responsibilities would also involve an unreasonable increase in the duration and cost of such services, to the detriment of users of maritime transport, and probably of overall safety.

The balance between the rights and obligations of classification societies must continue to be based on the great traditional principles of maritime law: otherwise, we may find ourselves in a situation where attempts to improve matters may have make the situation even worse.

Paris, 9th September 1994

34. B. Beck: "Liability of Marine Surveyors for loss of surveyed vessels: when someone other than the captain goes down with the ship". *Notre Dame Law Review*. 1989 pp. 246-270.

A FUTURE FOR CLASSIFICATION SOCIETIES

by Lars Lindfelt*

I am very happy to have been invited to speak to you this morning. Especially as I hold no brief whatsoever from any organisation or for that matter society. The views I express are entirely my own and I am the only one to be blamed for opening my mouth.

I think that the CMI should be congratulated upon starting this joint working party for the study of issues regarding classification societies. This is a matter which perhaps has purposefully escaped the watchful eyes of lawyers and legislators. Times have now changed and maybe time has even run out.

In my view classification societies were started by Hull underwriters, and if not so, at least controlled by the same. The Norske Veritas is an example of classification societies having been started by underwriters. In this organisation underwriters still command votes to one or other of their controlling bodies. So for a time underwriters exercised tight control over the classification societies. And through them, also over the shipowners. Then came a time when shipowners gradually moved in to take control. I hold no grudge — this must be due to increasing competition amongst underwriters. And now we have arrived in another situation. Somebody else is controlling the classification societies. That is the classification societies themselves. The people running the classification societies have managed to place themselves in what I describe as a weightless condition. There is in my mind no proper control over classification societies. And that better change — especially in the long term interest of the classification societies. In order to make everything perfectly clear: I wish classification societies should remain the good servant of the shipping industry. But I do not think they can go around doing their business in the same way as today.

In order to find a body to control the classification societies I have obviously thought of turning the clock back and allowing underwriters to take control once again. I do not think that this is the way to do it. Underwriters spend most of their days being underwriters. Underwriters do not, apart from P&I Clubs, have central, strong bodies, representing the industry. Also shipowners do change underwriters and clubs and this can cause problems. Before letting you in further in my thinking I would like to say something about the efforts made by the classification societies to straighten up things by self control. Following the increasing criticism against the classification societies starting in the 1980's the classifi

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cation societies put more effort into their international industry body — the IACS. Here classification societies have met some problems. Everybody calling themselves a classification society wished to become a member of the IACS. There is now a great variety within IACS in size and quality of service. This problem was met in making it a rule that all members of IACS must meet a quality test. Much to everybody's surprise all did. So now what there remains is for some classification societies to form a super IACS. And here, by the way, underwriters and clubs could maybe assist in only accepting a risk if it is a member of such a newly created organisation.

Not believing very much in putting classification societies under the control of underwriters and clubs, and not putting much hope in self-control I have come to the conclusion that classification societies should be put under the control of the IMO at the same time as owners retain their right to choose the classification society. I am most sorry to introduce such an infringement on the part of the classification societies but it has certain advantages. I will not go into bureaucratic details but my plan involves that every ship should have an IMO control number, that the IMO pays for the cost of classification services and also controls these bodies. We would then escape from the rather fascinating scenario where the body to be controlled pays for the control. Judging from the violent reactions I have had so far from classification societies, this must be the right way.

Repeating myself in way: I would like the classification societies to remain privately operated organisations and that the mass of knowledge within the classification societies is retained — and expanded.

I further more like the classification societies to take over 100 percent of all safety work for shipping — involving the total organisation of a shipping company. Hardware — the ships, and software — the organisation onboard and on land. It should be underlined that no underwriter and club has an organisation that can cover this total approach to the safety work. Such an organisation of the safety work should also over a time make all surveys now being arranged useless. There should only be one survey — as it used to be — the survey of the classification society. To achieve this — that the classification society has 100 percent responsibility for safety work another arrangement will be necessary. The distinction between work by the classification society as a government agent and as an agent for the shipowner must disappear.

And maybe this was not what you wished me to talk about. But from responsibility to liability. There have now been three cases touching or rather trying to touch on liability for classification societies. The *Sundancer*, the *Nicholas H* and the *Scandinavian Star*. In each of these cases, the classification societies just got away with it. A pyrrhic victory or victories. In two of the cases the courts could happily cling to what they believed to be the good law. There was not a tragic loss of nationals. That would certainly have changed the view of the courts. It is amazing to me that the classification societies got away with it, it is tragic to see their need to drape themselves in the Bahamian colours to achieve this. Maybe they will need the Estonian colours next time round. Obviously

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I think that classification societies must carry a liability and that goes for all the work they perform. The joint working groups idea that liability should be geared to fees charged is in my mind the only solution. But the amount at risk for classification societies must be considerable. Here I cannot but mention one stupid idea in the *Sundancer* case. Here it was held that the compensation sought was unjustified in relation to the fee charged. Did you ever hear such a thing in case involving damage to cargo.

In order to complete my sketch I think that the classification societies should work towards having rather the same rules for each classification society. In a way what P&I Clubs have done with members of the International Group of P&I Clubs. Classification societies could then discuss to pool liability exposure — but how and why is not for me to say today.

I have said in the beginning that time is short or maybe already expired. What I mean is that another catastrophe at sea will lead to drastic and not well thought through legislation. Another OPA, so to say or Class act of some year, 94 or 95. It is therefore essential that work within CMI continues in the issues regarding classification societies so that necessary changes can be made — with speed. The only body that can make it is the CMI.

CIVIL LIABILITY RESPONSIBILITIES OF VESSEL OWNERS AND CLASSIFICATION SOCIETIES

by Richard M. Leslie*

Civil responsibility for the welfare of the vessel and those aboard, both crew and passengers, has always rested with the ship owner, and not with its classification society. This rule of law was clearly enunciated in *Great American Ins. Co. v. Bureau Veritas*, 338 F. Supp. 999, 1012 (S.D.N.Y. 1972), in which the court applied United States and general maritime law to find that an owner had no right of action in tort or in contract against a classification society, because of the absolute and nondelegable duty of the owner to provide a seaworthy ship. The Great American court found that the duty of a classification society when it undertakes to perform a survey is "to perform the surveys in a safe and competent manner so as not to expose [the owner and the charterer] to risk of loss or liability to others." *Id.* at 1014. The society has performed its duty if it discloses to the owner any defects found. It is not liable for hazards that are not rectified or repaired, because the classification society has no control over the ship and no power to perform any acts or create any conditions upon a vessel. It does not create a hazard or render the vessel unseaworthy by the act of conducting the survey. The historic presumption of unseaworthiness therefore cannot be used against a classification society.¹

A primary reason for the services of classification societies is the owners' need to obtain insurance for their vessels. If the classification society's survey reveals that a vessel does not conform, it is still the owner's choice whether to make the repairs necessary, or to pay a higher premium, or to sail without insurance. Allowing a remedy against the classification society if the owner makes the wrong choice would make a classification society the absolute guarantor of any vessel it surveys, allowing the owner to avoid his primary historic duty, and eliminating the need for insurance. There is no justification for such a radical altera-

* Senior partner Shutts & Bowen. The author acknowledges the invaluable help of his partner, Maxine M. Long, and New York City attorney, Kenneth E. Gordon, in the preparation of this paper while absolving them of any blame for its presentation and opinions. 1 The *Great American* rule provides two standards which a classification society need satisfy. First the society must comply with its own rules. Second, the society has an obligation to notify the owner of violations of those rules. Once the society has disclosed any defects pursuant to its rules, or once the owner has discovered the defects on its own, the responsibility of a classification society is necessarily at an end.

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tion of the historic expectations and duties of the owners and classification societies. Furthermore, no one would benefit from such a substitution. Clearly, the owner must be the responsible party and is best able to protect all interests, including those of his passengers.

Recently the courts of the United States have had an opportunity to re-visit the *Great American* case in the context of two lawsuits against classification societies involving Bahamian flag vessels. In both, the courts have held that the societies have no liability whatsoever to the vessel owners nor to passengers and crew. The courts have found the laws of the Bahamas to apply to each case.

The single most “venerable and universal rule of maritime law,” as articulated by the United States Supreme Court in *Lauritzen v. Larsen*, 345 U.S. 571, 584-585 (1953), is the law of the flag:

Each state under international law may determine for itself the conditions on which it will grant its nationality to a...ship, thereby accepting responsibility for it and acquiring authority over it...the law of the flag supersedes the territorial principle, even for purposes of criminal jurisdiction...because it is deemed to be a part of the territory of that sovereignty [whose flag it flies].

Any other rule would invite chaos as a ship travels from one country to another. Without such a rule, the reasonable expectations of the parties to any maritime transaction could be thwarted, and there could be no commercial reliance as to the applicable law in any given situation.

For similar reasons, there must be uniformity as to a classification society’s potential liability to owners or third parties in connection with the classification surveys and other services it performs.

The United States courts that have addressed this issue, under both United States law and the law of the Bahamas, have held that in addition to the *Great American* protection a classification society is also entitled to immunity from suit where the society is acting on behalf of the flag state, and the flag state confers such immunity. Moreover, those decisions have also granted the classification society’s immunity to those surveys done to determine compliance with the society’s own rules and regulations, in addition to “statutory” regulations. This is in clear recognition of the need to protect classification societies from potentially crippling litigation.

The rationale for such immunity is to maintain the independence of classification societies, and to ensure that their services are available at reasonable cost.

In *Sundance Cruises Corp. v. American Bureau of Shipping*, 799 F. Supp. 363 (S.D.N.Y. 1992), affirmed, 7 F. 3d 1077 (2nd Cir. 1993), cert. denied, — U.S. —, 114 S.Ct. 1399, 128 L.Ed.2d 72 (1994), the trial court granted summary judgment in favor of the classification society in an action brought by a shipowner alleging that the society’s negligence caused the loss when the luxury cruise ship *M/V Sundancer* ran aground and sank off the coast of British Columbia in 1984. The ship flew the Bahamian flag, so the court applied Bahamian law and found the classification society to be immune from suit under the Bahamian Merchant Shipping Act. The trial court also found the individual surveyor to be im-

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immune on a theory of respondeat superior. The appellate court affirmed the trial court, but found that the individual surveyor was immune directly under the Act, and not merely vicariously immune as an agent of the classification society.

In a recent Florida decision, which is still pending on appeal, the trial court dismissed with prejudice an action brought by survivors and the representatives of decedents who died in the *Scandinavian Star* arson fire that occurred in April 1990 in *Scandinavian waters*. That action was brought in State court in Florida alleging negligent performance of both statutory and classification surveys performed in January 1990 in Florida. The ship was operating then as a passenger cruise ship between Florida and the Bahamas, and this was several months before its conversion into a Scandinavian car and passenger ferry.

The *Scandinavian Star*, like the *Sundancer*, was a Bahamian flag ship. The Bahamian Merchant Shipping Act was again applied, with the result that the society and its surveyor were both found to be immune from suit, for the statutory and classification survey performed.

Civil liability has been, is now, and should be in the future, the absolute obligation of the vessel owner to all parties, including passengers and crew. It is the owner's non-delegable legal duty to provide a seaworthy vessel, and as a practical matter, clearly only the owner can do this for the safety and protection of all.

LIABILITY, IS IT JUST AROUND THE CORNER? AN ADVOCATE'S VIEW OF A CLASSIFICATION SOCIETY AND ITS DUTY

by Brian D. Starer *

As many of you are aware, lately much attention has been paid in the international maritime community, particularly in the trade press, as to whether or not United States courts will recognize and enforce a duty extending from classification societies to shipowners or to third parties.

Several recent cases have raised this specific issue, yet the courts, while recognizing the possibility of a duty, have remained unwilling to ultimately extend liability based upon such a duty.

This unwillingness prevails whether the services were rendered for traditional class work or for statutory safety work required by the flag state. Many of you will question why anyone who can read would, now or ever, commence an action against a class society even in the great litigators' heaven, the United States.

Many would insist that the questions have been asked, and the courts have answered classification societies will not be held liable even for proven negligent performance of their services whether under contract or tort causes of action.

It is with this seemingly imponderable conclusion that I take issue, and I continue to urge efforts to challenge the misapprehensions that those who suffer loss or injury at the hands of classification societies should not be compensated for their losses. In my opinion, the latest U.S. case law makes clear that arcane policy, rather than proper application of legal theory, is the impetus behind the courts' unwillingness to impose liability on classification societies, even in the face of their recognized duty to exercise due care in performing services.

This unfortunate reality has been clear to me since my early days of practicing law. In 1972, I had the privilege, as a young Haight Gardner lawyer, to work with Terry Haight, now the distinguished Judge Haight of the United States District Court for the Southern District of New York, on the *Great American case*.

Great American was one of the first major cases in the United States to question the potential liability of a classification society, specifically, the liability of Bureau Veritas, which had surveyed the *Tradeways II*, a vessel that disappeared without a trace on a voyage from Antwerp to the Great Lakes in 1965. Certainly, as we all know (or, at least hope),

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vessels do not sink without a reason, leaving no trace of their crew or cargo. As with a murder scene where there is no body, proving what happened and who is guilty is daunting, if not impossible.

Is maritime law any different? The court in *Great American* acknowledged, by undertaking to survey and classify a vessel, a classification society obliges itself to perform two specific duties with due care: (1) to survey and classify a vessel in accordance with the rules and standards established by the society for that purpose; and (2) to detect and notify the owners and charterers of any defect in the ship, provided such defects are not already known or apparent. Notwithstanding this fundamental recognition of duty, Judge Tyler, the U.S. District Judge hearing the case, revealed his fear that in practice, such a remedy would produce many undesirable and incalculable effects and thus the court ultimately skirted its responsibility to impose liability.

As you will see from the cases that follow, the court in *Great American* exposed its unsound reasoning.

The court revealed its speculation that such a right of action would, in essence, make a classification society an absolute insurer of every vessel it surveyed and certified. Certainly, one must ask, is this an appropriate legal reason to deny the imposition of liability? Absolutely not! The court recognized this fallacy and constructed an "escape route," which future courts would also use, to avoid the task before it. As I mentioned earlier, "no body — no crime" ... and that's exactly what the court ultimately held.

According to the court, the shipowning interests failed to establish proximate cause.

The failure, in the eyes of the court, was to prove the existence of a causal nexus between the society's negligence and the loss of the vessel even though the society surveyed and certified the vessel prior to its fatal voyage.

The court, in a pattern that will become familiar in just a moment:

1. recognized the possibility of the existence of a duty;
2. expressed concern based on policy driven fears; and
3. avoided imposing liability by use of an "escape route".

The battle I faced for the first time 20 years ago, and have been continuing to face ever since, had just begun. It was but a dozen years later when I witnessed the tragic demise of a vessel arising out of the negligent performance of a classification society in carrying out its class and statutory duties. On June 29, 1984, the freshly (three weeks before) converted cruise ship *Sundancer* capsized alongside a dock as the unnatural result of a routine grounding.

Clearly, another mystery was before us.

This time, however, we had the benefit of the "body" and thus ultimately the answers to solve the "crime".

The vessel's watertight integrity had been impaired by missing safety valves designed to prevent backflooding and by baseball-sized holes in her watertight bulkheads — conditions that ultimately caused her to capsize, sink and be declared a constructive total loss. None of these conditions, which were outright violations of the SOLAS requirements, were detected by the classification society surveyors, although they were un-

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der a duty to do just that. As with *Great American*, the U.S. District Court recognized the possibility of the existence of a duty, exposed itself by expressing policy-based fears and, ultimately, turned to an “escape route” to avoid its judicial obligation.

I contend that the court did not have the stomach or desire to upset what it believed were the traditional roles and responsibilities of shipowners and class societies and I ask, is that an appropriate judicial response? Absolutely not. In *Sundance*, the court ultimately looked to the law of the vessel’s flag state, the Bahamas, and held that the American Bureau of Shipping was entitled to rely on immunity as defined under Section 279 of the Bahamian Merchant Shipping Act.

This was so despite the fact that this Bahamian statute had never been interpreted in any known Bahamian decision or by any jurist and, even more importantly, had not been raised as a defense in ABS’s Answer to the Complaint or during almost five years of discovery after over 100 depositions around the world.

Nevertheless, the case was dismissed on this alleged immunity, and no trial was ever held.

The opportunity to present the evidence, which was the benefit of the existence of a “body” in this case, was denied. In *Sundance*, the U.S. District Court referred to the *Great American* decision, often praising Judge Tyler’s dictum, though never once questioning or disputing its finding that by undertaking to survey and class a vessel, a classification society obliges itself to perform with due care.

Indeed, the second duty acknowledged by the *Great American* court was the detection of defects.

In this regard, the court in *Great American* explained, and I quote, “...the duty to use due care to detect and warn of hazards appears to provide a sounder basis for tort liability of a ship classification society. So far as I can determine, this theory of liability would not offend established case law in admiralty...”.

Nonetheless, the *Sundance* court echoed the speculative fear that a finding of liability would make a classification society an absolute insurer of every vessel and ultimately retreated behind an obscure and questionably applicable foreign immunity statute. I’d like to point out to those who would still insist that the courts have not recognized a duty that, under the law, there would be no need to assert immunity in a case where no duty existed. Certainly, it would appear that far-reaching flag-state immunity statutes now provide a shield for classification societies to hide behind, allowing them to perform negligent surveys and to issue erroneous flag-state SOLAS certificates, which the United States and other port state countries are required by the Convention to honor and accept. On April 7, 1990, a series of fires set by an arsonist on board the *Scandinavian Star* caused the tragic loss of more than 150 lives.

The fire broke out off the fjord-lined coast of Norway on a voyage from Oslo to Copenhagen a few days before Easter. Although most witnesses and documents were in Scandinavia, a lawsuit was eventually filed by the decedents’ estate representatives in the State of Florida, because that is where the classification and safety surveys were performed.

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Dismissing the case, the Florida State Circuit Court allowed Section 279 of the Bahamian Merchant Shipping Act once again to banish any serious discussion of duty and liability — this time to third parties. Immunity was conferred, and the case ended without a trial.

One must ask whether the result would have been the same had the lives lost been those of Americans (travelling along the Eastern Coast of the United States).

Is that what it will take for the U.S. courts to overcome their unfounded policy-driven fears of turning maritime law on its head and, thus, their unwillingness to impose liability? The time has come to determine if their supposition is correct — would holding classification societies responsible for the services they perform turn maritime law on its head? As a response, I'm sure many of you have heard, if not yourselves argued, that shipowners have a non-delegable duty to ensure the seaworthiness of their vessels or that fees charged by classification societies do not warrant the imposition of liability in amounts greatly exceeding such fees.

These arguments lack both merit and logic. Without a doubt, shipowners have a non-delegable duty to provide seaworthy vessels.

But finding liability on the part of a classification society does not nullify or lessen this duty.

On the contrary, shipowners retain and pay classification societies specifically to use their expertise in advising the owners so that they, the owners, can comply with these very duties.

Issuance of a SOLAS certificate, for example, is a classification society's "stamp of approval" that the vessel has been surveyed and is in compliance with the requirements of the Safety of Life at Sea Convention.

This "stamp" assures the shipowner that his duty in this regard has been met.

Indeed, if errors have been made by the surveyor, why should a shipowner ultimately suffer for a negligent survey by a reputable company that he both paid for and relied upon? Such a result would not be tolerated in most other areas of the law. As to the issue of payment, basic contract law provides that courts should not and may not question the adequacy of consideration.

This holds especially true in cases involving sophisticated parties of equal bargaining power.

In fact, between shipowners and classification societies, it is the shipowner who really has less bargaining power, as he cannot operate his vessel without these certificates. The courts' refusal to impose liability on classification societies has been common to cases in both the United States and the United Kingdom.

As in the U.S., however, rulings in Britain have included some promising language that reveals assumptions that reassure me that my mission is not hopeless, and instead some day may be accomplished. In both the *Morning Watch*, involving a third-party claim, and the *Nicholas H* involving a claim by cargo owners, the courts acknowledged classification societies had a duty not to act negligently.

In the *Morning Watch*, the court recognized the possibility that a duty of care might arise between the society and a third party if it is reason-

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bly foreseeable to the surveyor that a person or entity would rely on the survey.

In the *Nicholas H*, the court initially held that because the surveyor was aware he was directly affecting the interests of cargo owners by giving the ship the o.k. to sail, the necessary degree of proximity between surveyor and cargo interests was present.

Nonetheless, based on the specific facts of the case before it, the court in the *Morning Watch* held that plaintiff could not prove reliance on the surveyor's certificate, and further that pure economic loss was not recoverable. Similarly, in the *Nicholas H*, regardless of the fact that the court below found a duty, on appeal the court held that the shipowner owed a non-delegable duty to take care of cargo in accordance with the Hague Rules and that it would be unjust to impose a duty of care on a classification society where the court did not feel that a proximate relationship between cargo interests and the society existed.

This it held even though the court below articulately and accurately explained how the surveyor knew that the ship would not sail under current conditions without the approval of the surveyor; reliance was clearly present and all the parties were aware of it. Indeed, it is these very cases that have provided the impetus for you to gather here today, and certainly for the hard work of the Working Group.

It is also these very cases that bring me here to tell you I remain inspired by the words of these courts and, although their ultimate holdings may have aged me, I am young yet and the job is not finished.

I only hope it will not take the loss of hundreds of lives to counter the policies now driving the courts. I applaud the efforts of the Working Group, not only for its recognition that liability is near and achievable, but also for its firm belief that uniformity and constancy are essential. Perhaps the existence of standards and the absence of varying degrees of immunity will enable the courts to understand what it is the classification societies are responsible for and to overcome their fear that classification society liability will disturb waters only the courts perceive as tranquil. I implore you, the Working Group, and the entire maritime community, to take care in establishing the standards you select and the immunities you confer, for I believe that in the absence of a case involving human tragedy "closer to home", the courts will ultimately look to your standards when imposing the liability that is just around the corner.

SEMINAR ON MARINE INSURANCE

A Seminar was held during the Conference to consider the question:
“Is the doctrine of utmost good faith out of date?”

Papers were delivered by The Hon. Justice M.D. Kirby, AC, CMG,
Graydon Staring, Patrick Griggs and Jean-Serge Rohart

MARINE INSURANCE - IS THE DOCTRINE OF "UTMOST GOOD FAITH" OUT OF DATE?

The Hon Justice Michael D. Kirby AC CMG*

From coffee house to global industry

Let us start with a little history. It is always enlightening in the law, but especially in the field of marine insurance which is of ancient origin. The systems of indemnity known as "bottomry", "respondentia" and general average are the forebears to modern marine insurance.¹ The modern form of that insurance originates, as legend has it, from the practices of the 12th Century Lombard merchants. By the 15th Century, those merchants, to the irritation of locals, controlled much of the overseas trade of England, and hence of insurance over it. But by the reign of Queen Elizabeth I, the practice of marine insurance in England was becoming well developed. The Lombard merchants had begun to pack their parchments and to leave England.² Just as Mr Scott's untimely passage beneath a loading crane from which six bags of sugar rained down upon him,³ Mrs Donoghue's adverse consumption of a cocktail of aerated ginger-beer and snail⁴ and Mrs Miller's summertime fear of soaring cricket balls plummeting down into her garden⁵ have become legal folklore, so too has the 17th Century London coffee-house of Mr Edward Lloyd.

Very little is known either about Mr Lloyd or his Tower Street coffee house. But it appears that he took no personal part in the practice of underwriting, "contenting himself with providing congenial surroundings and facilities for his patrons to do business until his death in 1713. Lloyd's chief bequest to posterity was his name and the coffee house which bore it".⁶

* President of the Court of Appeal of New South Wales, Sydney, Australia. Formerly, Chairman of the Australian Law Reform Commission (1975-1983). The author acknowledges the assistance given by Mr Eugene Romaniuk, Research Officer to the Court of Appeal, in the preparation of this paper.

1. *Bottomry* was a system whereby a loan, secured by the vessel, taken out by a ship owner for the purposes of a seafaring venture would be forgiven if the vessel was lost. Repayment of the loan was conditional on the vessel's safe arrival. *Respondentia* was a system like bottomry, but the loan had as its security the cargo of the vessel. *Average* was a system of indemnity whereby various parties to a venture contribute rateably to indemnify another party to the same venture upon principles of common equity. See A. L. Parks, *The Law and Practice of Marine Insurance and Average*, Steven & Sons, 1988, Vol. 1, p. 4.
2. *ibid*, pp. 1-6.
3. *Scott v The London and St. Katherine Docks Company* (1865) 3 H&C 596; 159 ER 655.
4. *Donoghue v Stevenson* [1932] AC 562 (HL).
5. *Miller v Jackson* [1977] 1 QB 966 (CA).
6. Parks, *The Law and Practice of Marine Insurance and Average*, above, p. 8.

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Then, as now, willing parties for fee, individually or collectively, took risks for other merchants against loss at sea: ever a peril of marine adventures. The decision to accept that risk, and for what price, rested upon the participant underwriters' evaluation of the chance of loss having regard to the details of the voyage provided to them. In those infant days of marine insurance the knowledge of factors pertaining to the risk lay almost entirely with the person seeking the insurance. In *Carter v Boehm* Lord Mansfield said:⁷

“Insurance is a contract based upon speculation. The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only: the underwriter trusts to his representation and proceeds upon the confidence that the does not keep back any circumstance in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risque as if it did not exist”.

Proper assessment of such “contingent chance” necessitated the full and complete disclosure of all factors material to the risk. The common law responded to this need by holding that all contracts of insurance were contracts *uberrimae fidei*. Each party to the contract must act with the “utmost good faith” in his or her dealings with the other.⁸ This was to be in contrast to the common law's general *laissez-faire* theory to bargains in the general law of contract.⁹ There the theoretical underpinning was the doctrine of *caveat emptor*.¹⁰

In the time which has passed since Mr Edward Lloyd provided his customers with fragrant coffee many things have changed. The relative bargaining position of marine underwriters and assureds has changed. In those early days it lay almost solely with the insured. The purpose of the rule was to rectify that imbalance.¹¹ Today prudent underwriters have

7. (1766) 3 Burr 1905 at 1909; 97 ER 1162 at 1164.

8. See, for example, *Seaton v Heath* [1899] 1 QB 782 (CA) at 792 per Romer LJ; *Southern Cross Assurance Company Ltd v Australian Provincial Assurance Association Ltd* (1939) 39 SR (NSW) 174 (FC), at 187; *Halsbury's Laws of England* (4th ed), Vol 25, para 221. Note however that Lord Mansfield in *Carter v Boehm* (1766) 3 Burr 1905 at 1909; 97 ER 1162 at 1164 was of the view that the doctrine of “good faith” was applicable to all contracts, not only contracts of insurance. The common law of contract has not since *Carter v Boehm* so far developed in that way: see *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1994] 3 WLR 677 (HL), at 700 per Lord Mustill, despite some lingering indications to that effect. See, for example, the discussion of Priestley JA in *Renard Construction (ME) Pty Ltd v Minister for Public Works* (1992) 26 NSWLR 234 (CA), at 263f. See also J Carter “Good faith in Failed Contract Negotiations”, unpublished, a paper delivered to the University of Sydney Faculty of Law Continuing Legal Education program, 17 February 1994.

9. See generally D W Greig and J L R Davis, *The Law of Contract*, LBC, 1987, pp. 22-32.

10. See generally W H Hamilton, “The Ancient Maxim of *Caveat Emptor*” (1931) 40 *Yale Law Journal* 1133, esp. pp. 1135-1136. See also A G Guest (ed), *Benjamin's Sale of Goods* (3rd Ed), Sweet & Maxwell, 1987, at para 777.

11. *Pan Atlantic Insurance Co Ltd v Pine Topo Insurance Co Ltd* [1994] 3 WLR 677 (HL), at 717 per Lord Lloyd of Berwick.

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largely redressed this information imbalance.¹² The law has moved a great distance from the values which it embraced in the 18th and 19th Centuries. The perceptions of contemporary society concerning conduct appropriate to a bargain have also changed since the infant days of marine insurance. Against the background of these changes it is timely to ask whether, having regard both to theory and practice, the circumstances of modern times are such that duty of utmost good faith in marine insurance has become out of date?

The law of utmost good faith in Australian marine insurance

Like many other aspects of Australian law, both common and statute law, what may be described as "Australian marine insurance law" owes its origins to the law of England. Indeed, the High Court of Australia recently commented, in a rather different context, that "Australian law is not only the historical successor of, but is an organic development from, the law of England".¹³ While it had been established that the common law of Australia could develop independently of English precedent,¹⁴ as regards the general law of contract the English law remains particularly persuasive.¹⁵ This is especially so in the present case as the *Marine Insurance Act 1909 (Cth)*¹⁶ is, in substance, identical to the English *Marine Insurance Act 1906*, which represented a "partial codification of the common law".¹⁷

The duty of utmost good faith - s 23 of the *Marine Insurance Act*

Division 4 (ss 23-27) of the *Marine Insurance Act 1909* (the Act) deals with disclosure and representations. Section 23 of the Act¹⁸ expressly imposes upon the parties to the bargain a duty of utmost good faith. That section makes it clear that:

12. The Law Reform Commission, *Insurance Contracts* (ALRC20), AGPS, 1982, at para 175.

13. *Mabo v The State of Queensland (No.2)* (1992) 175 CLR 1, at 29 per Brennan J; Mason CJ and McHugh J agreeing.

14. *Australian Consolidated Press Ltd v Uren* (1967) 117 CLR 221; [1969] AC 590 (PC). See also the *Australia Act 1986* (Cth).

15. Greig and Davis, *The Law of Contract*, above, p. 1.

16. There are constitutional limitations upon the Australian Federal Parliament's legislative power to pass laws in respect of insurance. See generally J Quick and R R Garran, *The Annotated Constitution of the Australian Commonwealth*, The Australian Book Company, 1901 at §§ 160 and 185. Section 6(1) of the *Marine Insurance Act 1909* (Cth) provides:

"This Act shall apply to marine insurance other than State marine insurance and to State marine insurance extending beyond the limits of the State concerned".

This paper focuses exclusively on the operation of the Federal legislation in Australia, it, by virtue of s 6(1), being applicable to international transactions.

17. *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1994] 3 WLR 677 (HL), at 683.

18. Section 23 of the *Marine Insurance Act 1909* (Cth) provides:

"A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party".

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- (1) the duty of utmost good faith applies to *both* the underwriter and the assured;¹⁹ and
- (2) if the duty of utmost good faith is breached the innocent party may avoid entirely the contract.²⁰

Disclosure of material circumstances - s 24 of the *Marine Insurance Act*

Section 24(1) of the Act²¹ requires that (subject to circumstances which need not be disclosed)²² the assured (or his or her agent)²³ must

19. See also *Carter v Boehm* (1766) 3 Burr 1905, at 1909; 97 ER 1162, 1164 per Lord Mansfield; *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1994] 3 WLR 677 (HL), at 717-718 per Lord Lloyd of Berwick. Similarly, the duty of utmost good faith may extend to those “who are necessarily involved in the insurance”, not just the actual parties to the contract of insurance: *CE Heath Casualty & General Insurance Ltd v Grey* (1993) 32 NSWLR 25 (CA), at 37 per Mahoney JA. See also KCT Sutton, “The Duty of Utmost Good Faith” (1994) 22 *Australian Business Law Review* 302.

20. RJ Lambeth, *Templeman on Marine Insurance* (6th ed), Pitman, 1986, p. 21 makes the point that:

“...despite the words used in some of the older judgments the policy is not automatically void in the event of non-disclosure or misrepresentation but may be avoided by the aggrieved party“. (emphasis supplied).

“Avoided”, therefore, in the elective context of s 23 of the *Marine Insurance Act* 1909 (Cth) refers to avoidance *ab initio*. See The Law Commission of England and Wales, *Insurance Law: Non-Disclosure and Breach of Warranty* (No. 104), 1980, at para 3.9; CCH, *Australian & New Zealand Insurance Reporter*, at § 6-04.

21. Section 24(1) of the *Marine Insurance Act* 1909 (Cth) provides:

Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract.

22. Subject to inquiry by the insurer, s 24(3) of the *Marine Insurance Act* 1909 (Cth) provides that the assured need not disclose:

“(a) Any circumstance which diminishes the risk;

(b) Any circumstance which is known or presumed to be known to the insurer.

The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know;

(c) Any circumstance as to which information is waived by the insurer;

(d) Any circumstance which it is superfluous to disclose by reason of any express or implied warranty”.

23. Where the contract of insurance is effected by an agent for the assured, then subject to the provisions of s 24(3) of the *Marine Insurance Act* 1909 (Cth) (circumstances which need not be disclosed), s 25 of the *Marine Insurance Act* 1909 (Cth) provides that the agent must disclose to the insurer:

“(a) every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him;

and

(b) every material circumstance which the assured is bound to disclose, unless it come to his knowledge too late to communicate it to the agent”.

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disclose to the underwriter “every material circumstance²⁴ which is known to the assured”. By s 24(1) of the Act, the assured is deemed to know “every circumstance which, in the ordinary course of business, ought to be known by him” or her. Hence, the assured is required to disclose both actual and constructive knowledge of facts affecting the risk.²⁵ Section 24(1) of the Act also provides:

- (a) that the disclosure by the assured must be made before the contract of insurance is concluded;²⁶ and
- (b) that failure by the assured to make the necessary disclosure allows the insurer to “avoid the contract”.²⁷

The test of materiality - the “prudent insurer”

Section 24(2) of the Act²⁸ makes the “prudent insurer” the applicable test of “materiality”. By that test, a material circumstance is one “which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk”.²⁹ These words

24. For the purposes of Division 4 of the *Marine Insurance Act* 1909 (Cth), the term “circumstance” includes “any communication made to, or information received by, the assured”: s 24(5) of the *Marine Insurance Act* 1909 (Cth).

25. See generally Lambeth, *Templeman on Marine Insurance*, above, p. 26-27. See also *Proudfoot v Montefiore* (1867) LR 2 QB 511, at 521-522.

26. For the purposes of Division 4 of the *Marine Insurance Act* 1909 (Cth), s 27 of the *Marine Insurance Act* 1909 (Cth) deems a contract of marine insurance to be “concluded” when:

“...the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract”.

27. Provision by s 24(1) of the *Marine Insurance Act* 1909 (Cth) that failure to disclose a material circumstance by the assured allows the insurer to avoid the contract appears somewhat unnecessary having regard to s 23 of the *Marine Insurance Act* 1909 (Cth); full disclosure of material facts and circumstances being the cornerstone of the duty of utmost good faith. But it underlines the consequence of non-disclosure.

28. Section 24(2) of the *Marine Insurance Act* 1909 (Cth) provides:

“Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk”.

29. At present the weight of judicial opinion favours the “prudent insurer” test of materiality. Other tests of materiality include the “reasonable insured” (see, for example, *Joel v Law Union and Crown Insurance Co* [1908] 2 KB 863 (CA), at 885; *Horne v Poland* [1922] 2 KB 364, at 366-367; *The Guardian Assurance Co Ltd v Condongianis* (1919) 26 CLR 231, at 246-247), the “reasonable insurer” (see, for example, *Southern Cross Assurance Co Ltd v Australian Provincial Assurance Association Ltd* (1939) 39 SR(NSW) 174 (FC), at 187-188; *Club Development & Finance Corp Pty Ltd v Bankers & Traders Insurance Co Ltd* [1971] 2 NSWLR 541 (SC), at 545; *March Cabaret Club & Casino Ltd v The London Assurance* [1975] 1 Lloyd’s Rep 169 (QB), at 176), and the “reasonable or prudent insurer” (see, for example, *Woolcott v Sun Alliance and London Insurance Ltd* [1978] 1 All ER 1253 (QB), at 1257; *Reynolds v Phoenix Assurance Co Ltd* [1978] 2 Lloyd’s Rep 440 (QB), at 459). It may be that the differences between these formulations are merely semantic, the substance of all being substantially the same. See *Lambert v Co-operative*

suggest that a material circumstance is one which would have an effect on the mind of a prudent insurer in determining whether it will undertake the risk and, if so, for what price and upon what conditions. Such a broad test places an onerous task on the assured if it is to comply with the duty.³⁰ Most recently the English House of Lords in *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd*³¹ endorsed such a broad approach. It held that it is not necessary (indeed, it would be contrary to the ordinary meaning of the words of the provision), that a material circumstance be one that has a “decisive” effect on the insurers acceptance of the risk, or the price or conditions of that acceptance.

Non-disclosure and causality - recent developments in the House of Lords

While it is clear that the opinion of a particular insured as to the materiality of a fact is not determinative,³² debate persists as to whether a particular insurer who would not have *actually* been influenced by the assured’s full and proper disclosure ought to be entitled, in the event of non-disclosure by the assured to avoid entirely the contract of insurance where such disclosure would have influenced a prudent insurer. Arguably, to ignore the insurer’s actual response leads to the “absurd position”, to use the words of Kerr J said in *Berger v Pollock*,³³ “where the Court might be satisfied that the insurer in question would in fact not have been so influenced even though other prudent insurers would have been. It would then be a very odd result if the defendant insurer could nevertheless avoid the policy”.³⁴ It is, as Lord Mustill noted in *Pan Atlantic*,³⁵ a “question which concerns the need or otherwise, for a *causal connection* between the misrepresentation or non-disclosure and the making of the contract of insurance”. (emphasis added)

Most recently, the House of Lords in *Pan Atlantic* has given effect to such an approach. Considering s 18(2) of the English *Marine Insurance Act 1906* (identical to s 24(2) of the *Marine Insurance Act 1909* (Cth)),³⁶

Insurance Society Ltd [1975] 2 Lloyd’s Rep 485 (CA), at 489; *Marene Knitting Mills Pty Ltd v Greater Pacific General Insurance Ltd* [1976] 2 Lloyd’s Rep 631 (PC), at 642. See also *Barclay Holdings (Aust) Pty Ltd v British National Insurance Co Ltd* (1987) 8 NSWLR 514 (CA), at 526. Contrast *March Cabaret Club & Casino Ltd v The London Assurance* [1975] 1 Lloyd’s Rep 169 (QB), at 176.

30. *Barclay Holdings (Australia) Pty Ltd v British National Insurance Co Ltd* (1987) 8 NSWLR 514 (CA), at 518

31. [1994] 3 WLR 677 (HL), at 682-683, 695-696, 705, 713 and 714.

32. See, for example, *The Guardian Assurance Co Ltd v Condongianis* (1919) 26 CLR 231, at 246; *Saunders v Queensland Insurance Co Ltd* (1931) 45 CLR 557, at 563.

33. [1973] 2 Lloyd’s Rep 442 (QB), at 463.

34. See also *Viola v Mercantile Mutual Insurance Co Ltd* (1985) 3 ANZ Insurance Cases § 60-620 (NSWSC), at 78, 794.

35. [1994] 3 WLR 677 (HL), at 705.

36. Lord Mustill (*ibid* at 713) expressed the view that the requirement of a causal connection between the non-disclosure and entering of the contract of insurance applied also to non-marine insurance. Earlier in *Lambert v Co-operative Insurance Society Ltd* [1975] 2 Lloyd’s Rep 485 (CA), at 487, 492 and 493 the English Court of Appeal held that the “prudent insurer” test of materiality contained in s 18(2) of the English *Marine Insurance Act*

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the Law Lords held that, before an underwriter could avoid a contract for non-disclosure, the underwriter had to show that it had actually been induced by the non-disclosure to enter into the policy on the relevant terms.³⁷ In so concluding, the House of Lords overruled, in part, the earlier holding of the English Court of Appeal in *Container Transport International Inc v Oceanus Mutual Underwriting Association (Bermuda) Ltd*³⁸ (“CTP”) which, after a full review of the relevant authorities, had rejected such an approach.³⁹ In *Pan Atlantic*⁴⁰ Lord Templeman said:

“In my opinion “the judgment of a prudent insurer” cannot be said to be “influenced” by a circumstance which, if disclosed, would not have affected the acceptance of the risk or the amount of the premium. On behalf of the underwriters, [it was] submitted that a circumstance was material if a prudent insurer would have “wanted to know” or would have “taken into account” that circumstance even though it would have made no difference to his acceptance of the risk or the amount of the premium”.

Lord Lloyd — so far as is known, no descendant of the aromatic Edward — presented “two separate but closely related questions” to be asked of an insurer who seeks to avoid a contract of insurance for non-disclosure or misrepresentation.⁴¹

“(1) Did the misrepresentation or non-disclosure induce the actual insurer to enter into the contract on those terms? (2) Would the prudent

1906 was applicable to non-marine insurance. In Australia, the “prudent insurer” test of materiality in the context of non-marine insurance differs slightly. The formulation of Samuels J in *Mayne Nickless Ltd v Pegler* [1974] 1 NSWLR 228 (SC), at 239, makes a fact material if it would have “reasonably affected” the mind of a prudent insurer in determining whether he will accept the risk and, if so, for what price and upon what conditions. The formulation laid down in the English and Commonwealth marine insurance Acts refers to a fact which would have “influenced” the mind of a prudent insurer. In the Australian non-marine context, the formulation of Samuels J has been approved or adopted in subsequent cases. See, for example, *Marene Knitting Mills Pty Ltd v Greater Pacific General Insurance Ltd* [1976] 2 Lloyd’s Rep 631 (PC), at 642; *National & General Insurance Co Ltd v Chick* [1984] 2 NSWLR 86 (CA), at 108; *Barclay Holdings (Aust) Pty Ltd v British National Insurance Co Ltd* (1987) 8 NSWLR 514 (CA), at 520, 523 and 526. 37. [1994] 3 WLR, at 680-681, 681-682, 712, 713, 714 and 732-733.

38. [1984] 1 Lloyd’s Rep 476 (CA), at 492, 510-511 and 529.

39. See also *Mayne Nickless v Pegler* [1974] 1 NSWLR 228 (SC), at 239 per Samuels J; *Zurich General Accident & Liability Insurance Co Ltd v Morrison* [1942] 2 KB 53 (CA), at 60; *Glasgow Assurance Corp Ltd v William Symondson & Co* (1911) 16 Com Cas 109, at 119; *Babatsikos v Car Owners’ Mutual Insurance Co Ltd* [1970] VR 297 (SC), at 306-307; *Avon House Ltd v Cornhill Insurance Co Ltd* (1980) 1 ANZ Insurance Cases § 60-429 (NZHC), at 77, 227-72, 228; *Elston v Phoenix Prudential Australia Ltd* (1987) 4 ANZ Insurance Cases § 60-765 (QSC).

40. [1994] 3 WLR, at 680-681.

41. *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1994] 3 WLR 677 (HL), at 732-733.

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insurer have entered into the contract on the same terms if he had known of the misrepresentation or non-disclosure immediately before the contract was concluded? If both questions are answered in favour of the insurer, he will be entitled to avoid the contract, but not otherwise”.

“Normally”, evidence of the actual insurer him or herself will be required to satisfy the court in respect of question (1). Evidence of an independent broker or insurer will ordinarily be given to satisfy the court in respect of question (2).⁴²

The effect of the decision of the House of Lords in *Pan Atlantic* was to approve⁴³ the approach of Kerr J in *Berger v Pollock*.⁴⁴ This was one which as Kerr LJ, as his Lordship had become, he recanted in *CTI*.⁴⁵ Judicial first thoughts are usually the best.⁴⁶

The House of Lords decision and Australian law

In the context of the Australian *Marine Insurance Act*, whether an insurer need actually be influenced by the non-disclosure depends upon the meaning to be attributed to the words: “which would influence the judgement of a prudent insurer”, in s 24(2) of the Act. While there is Australian authority tending toward the requirement that the insurer should actually have been induced by the non-disclosure of a material fact,⁴⁷ that question of interpretation⁴⁸ has not yet been finally determined by

42. *ibid*, at 733.

43. *ibid*, at 732.

44. [1973] 2 Lloyd’s Rep 442 (QB), at 463.

45. [1984] 1 Lloyd’s Rep 476 (CA), at 495.

46. *Barclay Holdings (Aust) Pty Ltd v British National Insurance Co Ltd* (1987) 8 NSWLR 514 (CA), at 520.

47. In *Western Australian Insurance Co Ltd v Dayton* (1924) 35 CLR 355, Isaac ACJ (with whom Gavan Duffy J agreed) said, at 379-380:

“The test of materiality is whether in view of “all the circumstances at the time”, which include of course, the full circumstances of the fact undisclosed, that fact would have influenced the Company as a prudent insurer in fixing the premium or in determining to accept the risk. But it must not be forgotten that “the circumstances” include the knowledge, the practice and the proved conduct of the insurer. If, for instance, it were the known practice of a company to disregard a certain class of facts, the non-disclosure of such a fact would not prima facie qua that company be material, however it might be with regard to another company”. (emphasis added).

See also *Barclay Holdings (Aust) Pty Ltd v British National Insurance Co Ltd* (1987) 8 NSWLR 514 (CA), at 517, 520 and 525; *Visscher Enterprises Pty Ltd v Southern Pacific Insurance Co Ltd* [1981] QdR 561 (FC), at 587-588; *Itohar Pty Ltd v Mackinnon and Commercial Union Assurance Co PLC* (1985) 3 ANZ Insurance Cases § 60-610 (QSC), at 78, 722-78, 723.

48. In *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1994] 3 WLR 677 (HL) the House of Lords considered this issue in the context of the *Marine Insurance Act* 1906 (UK). In that case the resolution of the issue was considered to be a matter of *interpretation* of the provisions of the Act. See esp. at 681-682 per Lord Goff of Chieveley and at 712 per Lord Mustill.

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Australian law. There are, I think, two substantive matters of legal principle which would favour the adoption in Australia of the holding established by the House of Lords in *Pan Atlantic*.

First, the identical wording of the provisions concerned⁴⁹ and the legislative history of the Australian *Marine Insurance Act* make the decision of the House of Lords extremely persuasive. As has been said many times, this is an area of the law where judges must be willing to subordinate their own fancies to the needs of common international legal principles understood throughout a global industry.

Secondly, the law has generally required that, before an aggrieved party can seek redress for a wrong suffered by him or her, as the result of another's statement or omission, the aggrieved party must have been induced by, and therefore actually relied upon, that statement or omission. Lord Mustill in *Pan Atlantic* said⁵⁰ of the general law of misrepresentation:

“...it is beyond doubt that even a fraudulent misrepresentation must be shown to have induced the contract before the promisor has a right to avoid, although the task of proof may be made more easy by a presumption of inducement. The case of innocent misrepresentation should surely be a fortiori, and yet it is urged that so long as the representation is material no inducement need be shown”.⁵¹

Similarly, the various⁵² doctrines of estoppel have, as a fundamental precondition to the granting of relief, required that the aggrieved party should have reasonably relied upon (and therefore been induced to act to his or her detriment by) the representation of, or assumption or expectation encouraged by, the other party.⁵³ Legislation protecting the rights of consumers similarly requires a causal connection between, for example, a misleading or deceptive representation or conduct and the contract by which loss or damage is suffered.⁵⁴

49. *Marine Insurance Act* 1906 (UK), s 18(2) and *Marine Insurance Act* 1909 (Cth), 24(2).

50. [1994] 3 WLR, at 705.

51. See also Spencer Bower and Turner, *The Law of Actionable Misrepresentation* (3rd ed), Butterworths, 1974, pp. 130f.

52. Meagher, Gummow and Lehane, *Equity - Doctrines and Remedies* (3rd ed), Butterworths, 1992, at para [1701] make the point that the term “estoppel” has been used in various senses in the law. But there has never been agreement as to the doctrinal significance of the various senses of the term or as to their relationship, each to the others”. See also *Discount and Finance Ltd v Gehrig's New South Wales Wines Ltd* (1940) 40 (SNW) 598, (FC), at 602-603 per Jordan CJ; *Legione v Hateley* (1983) 152 CLR 406, at 430 per Mason and Deane JJ.

53. See, for example, *Waltons Stores (Interstate) Ltd v Maher* (1988) 164 CLR 387, at 428-429 per Brennan J, which Meagher, Gummow and Lehane, *Equity - Doctrines and Remedies*, above, at para [1710] say encapsulates the “current state of authority as to equitable or promissory estoppel”. See also *Silovi Pty Ltd v Barbaro* (1988) 13 NSWLR 466 (CA), at 472 per Priestley JA. As regards estoppel by conduct, see *The Commonwealth v Verwayen* (1990) 170 CLR 394, at 444 per Deane J.

54. See, for example, s 52 of the *Trade Practices Act* 1974 (Cth) and the commentary by R V Miller, *Annotated Trade Practices Act* (15th ed), LBC, 1994, pp. 231-233.

For these reasons should the issue arise before an Australian court, it is likely that the court would adopt the reasoning and process of interpretation outlined in the *Pan Atlantic*. But I will say no more in case the issue falls to be determined by me judicially. I should hate to be disqualified from exercising an independent mind on the matter.

Some general comments on the desirability of a causal connection

Leaving aside the two questions just dealt with, there are some general comments which can be made of the causal requirement propounded by the House of Lords in *Pan Atlantic*. The English Court of Appeal has been much and variously criticised⁵⁵ for its decision in *CTI*. It is particularly relevant to consider two of those general criticisms.

First, it had been suggested that the law as established by *CTI* was “too harsh” in that it deprived “the assured of recovery for a genuine loss by perils insured against even if the misrepresentation or non-disclosure had no bearing on the risk which brought about the loss”.⁵⁶ Lord Templeman in *Pan Atlantic* said,⁵⁷ in emphatic terms:

“If this is the result of the judgments of the Court of Appeal in the [CTI] case then I must disapprove of that case. If accepted, this submission would give carte blanche to the avoidance of insurance contracts on vague grounds of non-disclosure supported by vague evidence even though disclosure would not have made any difference”.

Having reached the conclusion they did, it is implicit that the Law Lords in *Pan Atlantic* accepted, or at least approved the substance of, this criticism. It is not hard to see why it is entirely inappropriate that an insurer, commonly possessed of great knowledge and resources, should be able to avoid a contract of insurance upon the flimsy basis that although it was not itself actually induced or influenced by the non-disclosure to enter into the contract upon the terms that it did (and full disclosure would not have altered its acceptance of the risk upon those terms), such disclosure would have influenced the acceptance of the risk or its terms by a “prudent” insurer. Indeed, Lord Mustill in *Pan Atlantic* suggested that, but for the absence of express words of causal connection in the provisions concerned:⁵⁸

“...I doubt whether it would nowadays occur to anyone that it would be possible for the underwriter to escape liability even if the matter complained of had no effect on his processes of thought”.

55. In *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1994] 3 WLR 677 (HL), at 692-695, Lord Mustill outlines nine of the “principal” complaints made against the Court of Appeal’s decision in *Container Transport International Inc v Oceanus Mutual Underwriting Association (Bermuda) Ltd* [1984] 1 Lloyd’s Rep 476 (CA).

56. *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1994] 3 WLR 677 (HL), at 692 per Lord Mustill.

57. *ibid*, at 680-681.

58. *ibid*, at 705.

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The import of the requirement of a causal connection is consistent with the “vice” which the doctrines of misrepresentation and non-disclosure have long sought to deter.⁵⁹ That vice is not that the insurer has underwritten a risk which has resulted in a loss, but that a breach of the duty of utmost good faith “has led the underwriter to approach the proposal on a false basis”.⁶⁰ As a matter of logic, it ought not be said that an insurer’s intention to create legal relations, nor the *consensus ad idem*, could be vitiated by circumstances which would not influence the insurer’s decision to enter into the contract. Similarly, where the insurer has impliedly waived reliance upon some of the terms of the assured’s offer, by the fact that those terms would not actually influence the judgment of the insurer, then that contract ought not be vitiated by a later assertion by the insurer that those impliedly waived terms are in fact applicable to entitle it to escape the obligations otherwise assumed.

It had been suggested that the law was “too harsh” in that it deprived “the assured of his recovery even if full and accurate disclosure would have done no more than cause the actual underwriter, or the hypothetical prudent underwriter to insist on one rate of premium rather than another”.⁶¹ I would agree with Lord Mustill⁶² that there is an element of *prima facie* attractiveness about a solution which involves an element of “proportionality”. In the case of “innocent” non-disclosure, a concept of “proportionality” could take a number of forms, two of which include:

- (1) that the insurer pay to the assured a proportion of the claim, calculated by reference to the difference between the premium which was in fact paid and the premium which would have been payable had there been full disclosure; and
- (2) that the assured be required to pay the correct premium payable had there initially been full disclosure before the insurer will be required to pay the claim.⁶³

Assuming the insurer to be unable to show that the non-disclosure was anything but “innocent”, a number of possibilities arise which detract from the initial attractiveness of a concept of “proportionality”. The concept involves an element of self-insurance: tacitly encouraging assureds not to make full disclosure in an attempt to benefit from a lower premium. Those assureds so inclined are invited by the concept of “proportionality” to chance a non-disclosure upon the basis that, should that

59. Contrast Lord Mustill in *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1994] 3 WLR 677 (HL), at 692, who says that while the requirement of a causal connection has “practical force... it is not consistent with general principle”.

60. *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1994] 3 WLR 677 (HL), at 692 per Lord Mustill.

61. *ibid* at 693 per Lord Mustill.

62. *id.*

63. Law Commission of England and Wales, *Insurance Law: Non-Disclosure and Breach of Warranty* (No. 104), 1980, at para 4.4f. See also s 28(3) of the *Insurance Contract Act* 1984 (Cth), extracted at n. 76 below.

non-disclosure be catalogued, by a court or otherwise, to be “innocent”, recovery from the insurer will still be possible, either at a reduced level or after further payment. The premium being the driving factor in such an invitation, it is likely that those who can least afford the premium, and therefore the total failure to recover, are placed in a situation where such temptation can be least afforded. Indeed, the second formulation offers a positive incentive to withhold material circumstances, the full amount being recoverable after the payment of an additional amount to the insurer. A lifetime in the law has demonstrated to me (and doubtless others even less *naïf*) that some people are not as honest and noble as we would like to think they are. People otherwise honest and noble may be driven by adverse circumstances to act in a manner contrary to their usual conduct. Thus, while the concept of proportionality has real merit, it also presents problems which need to be considered, apart from practical issues such as the difficulty involved in assessing claims.⁶⁴

Closely related is the suggestion that the “prudent insurer” test of materiality should be sharpened by the introduction of a “decisive influence test”. After *CTI*, the test of materiality became all important as the sole ground for allowing the insurer to avoid the contract of insurance for non-disclosure. Implicit in the “decisive influence test” was the assumption that an insurer should not be able to avoid the contract in circumstances where full disclosure would not have altered the insurer’s acceptance of the risk. That is, a circumstance would be “material” only if it would have had a decisive effect on the insurer’s acceptance or otherwise of the risk, adjudged by the standard of the objective prudent insurer.⁶⁵ By that test of materiality, an attempt had been made to move the actual inducement requirement from the creation of the contract to the materiality of circumstances to be disclosed. The House of Lords in *Pan Atlantic* rejected the “decisive influence test” as capable of implication into s 18(2) of the *English Marine Insurance Act 1906*.⁶⁶ While the “decisive influence” test of materiality and the imposition of a requirement for causal connection between the non-disclosure of a material circumstance and the entering into of a contract of insurance are both concerned with the requirement of actual inducement, the practical effect of the “decisive influence” test may be the encouragement of an unduly restrictive passage of information between the assured and the insurer. The Law Lords decided that this was not desirable as a matter of legal policy. A risk of the “decisive influence” test was that assureds would disclose only circumstances which they were advised would be of “decisive influence” to the prudent insurer. Aware of that fact, a truly

64. The Law Commission of England and Wales ultimately rejected the concept of proportionality upon the basis that it would be too difficult to assess claims. See Law Commission of England and Wales, *Insurance Law: Non-Disclosure and Breach of Warranty* (No. 104), 1980, at paras 4.2.-4.31 and 10.6.

65. *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1994] 3 WLR 677 (HL), at 683 per Lord Goff *o* Chieveley.

66. *ibid*, at 682-683, 695-696, 705, 713 and 714.

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careful insurer would have to inquire for itself, specifically, as to all those circumstances which, while not “decisive”, would collectively influence the assessment and acceptance of the risk. Of course, the insurer’s gathering of such information would have a price. It is not unreasonable to suppose that, ultimately, the consumers of goods which had been the subject of some form of marine insurance would pay that price.

Leaving aside the merits of the extent of with the disclosure presently required, the approach adopted by the House of Lords in *Pan Atlantic* encourages full disclosure of all material circumstances which collectively, as opposed to individually, are decisive upon the assessment and acceptance of the risk. That approach does not place any burden extra to that already upon insurers to gather information and thereby avoids the potential of that extra cost. Given the desirability of the need for actual inducement, the approach of the House of Lords in *Pan Atlantic* appears to achieve this object in a more cost appropriate manner than that offered by the “decisive influence” test of materiality. However, as will be discussed below, the present test of materiality as endorsed by *Pan Atlantic* is itself open to criticism upon the different basis that it places too onerous a task on an assured seeking to comply with the disclosure obligation.

Australian reforms in the field of general insurance

As the preceding discussion suggests, at least in the context of marine insurance the duty of utmost good faith remains an onerous one, basically as it has been since Edward Lloyd’s day. Reality suggests that the stringent obligations imposed by that duty are felt more by the assureds than the insurers. Indeed, it is difficult to contemplate the situation where an assured, having suffered loss against which it was insured, would seek to avoid the contract of insurance upon the breach of the duty of good faith.⁶⁷ Arguably, however, as the duty of good faith applies also to the manner of performance of the contract,⁶⁸ the assured, under a marine insurance policy, ought to be able, in principle, to seek some degree of redress where the insurer unjustifiably asserts that the assured’s conduct is such that the insurer ought to be able to avoid the contract or otherwise performs its obligations under the contract in a manner contrary to the sense of mutuality and fair dealing imported into the contract by the duty of utmost good faith.⁶⁹ But is the doctrine of utmost good faith in its present manifestation still necessary? Could its purposes be achieved by other methods?

67. Of course, as Lord Mansfield noted in *Carter v Boehm* (1766) 3 Burr 1905, at 1909; 97 ER 1162, at 1164, if an underwriter insured a risk he already knew to have been completed without loss, the assured could avoid the contract of insurance and the underwriter be liable to return the premium.

68. The duty of utmost good faith at least extends to the making of claims by the assured him or herself or by his or her agent or broker on his or her behalf. See *Black King Shipping Corporation v Massie (The ‘Litsion Pride’)* [1985] 1 Lloyd’s Rep 437 (QB).

69. For example, circumstances may arise where general damages will be available to the assured for the insurer’s breach of the insurance contract. See, for example, *Stuart v Guardian Royal Exchange Assurance of New Zealand Ltd [No. 2]* (1988) 5 ANZ Insurance Cases

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As a result of recommendations by the Australian Law Reform Commission,⁷⁰ made at a time when I was its Chairman, substantive reforms were introduced to the Australian law of general insurance by the *Insurance Contracts Act* 1984 (Cth). Those reforms included reforms to the duty of utmost good faith. By express provision, the *Insurance Contracts Act* does not apply to contracts to which the *Marine Insurance Act* applies.⁷¹

The Australian Law Reform Commission did not propose that the duty of utmost good faith should be abandoned entirely, in favour of some new concept. Indeed the Commission recognised the utility of the concept. The Commission said:⁷²

“The origin of the duty of disclosure lay in the superior knowledge of factors relevant to the risk which the insured possessed in early marine insurance, when underwriting expertise was in its infancy. It is often said that position has, in most cases of insurance, now been reversed: insurers have available to them sophisticated statistical data and obtain information on many aspect of the risk which they undertake. It is true that the insurer has superior, even exclusive, knowledge of statistical matters relevant to numerous categories and subcategories of risk. But it does not have superior knowledge of factors peculiar to the particular risk. It does not know that the life to be insured has been the subject to death threats, that a house proposed for insurance has been rewired by its inexpert owner rather than a qualified electrician, or that the insured under a houseowner’s/householder’s policy has been convicted of theft on three separate occasions. Factors such as these are likely to be in the exclusive knowledge of the insured. There are economic reasons which prevent insurers from making an independent investigation of each and every proposal, particularly in respect of such classes as houseowner’s/householder’s and motor vehicle insurance. Prime reliance in these areas must be placed on the insured’s answers to the questions asked of him by the insurer”.

§ 60-844 (NZHC); *Davidson v Guardian Royal Exchange Assurance* [1979] 1 Lloyd’s Rep 406 (Sc. Ct); *Edwards v A A Mutual Insurance Co* (1985) 3 ANZ Insurance Cases § 60-688 (NZHC); *Harris v The New Zealand Insurance Co Ltd* (1987) 4 ANZ Insurance Cases § 60-817 (NZHC); *Kerr v The State Insurance General Manager* (1987) 4 ANZ Insurance Cases § 60-781 (NZHC); *Dome v The State Insurance General Manager* (1988) 5 ANZ Insurance Cases 60-835 (NZHC); *Moss & Anor v Sun Alliance Australia Ltd* (1990) 6 ANZ Insurance Cases § 60-967 (SASC).

70. See The Law Reform Commission, *Insurance Contracts* (ALRC 20), AGPS, 1982.

71. Section 9 (1) of *Insurance Contracts Act* 1974 (Cth) provides:

“Except as otherwise provided by this Act, this Act does not apply to or in relation to contract and proposed contract

...

(d) to or in relation to which the *Marine Insurance Act* 1909 applies...

72. The Law Reform Commission, *Insurance Contracts* (ALRC 20), AGPS, 1982, at para 175.

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Clearly the Commission recognised the importance of the duty of utmost good faith and the potential cost of abandoning the doctrine. However, the Commission disagreed with the then exposition of the duty of utmost good faith as it applied to general insurance. The Commission said:⁷³

“Even so, there is little doubt that the principle of disclosure requires modification. The doctrine of uberrima fides does not justify a rule which requires the insured to show more than the utmost good faith. Under the existing test, the insured is required to disclose not only those facts whose relevance to the contract he does or should, as a reasonable man, appreciate, but also facts of whose relevance he is quite ignorant. It has been argued that the existing duty is justified on the basis of the underwriters’ need for full information for detailed assessment of risks. Nobody, underwriters included, would suggest that the insured be under an absolute duty of disclosure, even in respect of the facts of which he is quite ignorant. Yet facts of that type are also relevant to assessment of the risk. It is widely recognised that a new balance should be struck between the underwriter’s need for information and the insured’s need for security in relying upon insurance”. (emphasis supplied; citations omitted).

In essence, the Australian Law Reform Commission took issue with the “prudent insurer” test of materiality for general insurance. Against the nature of the duty of utmost good faith in the context of marine insurance, the substantive reforms effected by the *Insurance Contracts Act* are:

- (1) A matter will be “material” in the context of general insurance if the insured knows (or a reasonable person in the insured circumstances could be expected to know) that a matter would be relevant to the decision of the particular insurer to accept the risk and if so upon what terms.⁷⁴ Hence, the law adopts a “particular insurer” and “actual or reasonable insured” test of materiality. Similarly, in contrast to the situation in marine insurance, the assured in general insurance is not deemed to have constructive knowledge of material facts, materiality in general insurance concerning itself only with “every matter that is known to the insured”;⁷⁵ and
- (2) In contrast to the insurer’s ability to avoid entirely the contract of insurance for a breach of the duty of disclosure in the context of mar-

73. *id.*

74. Section 21(1) of the *Insurance Contracts Act* 1984 (Cth) provides:

“Subject to this Act, an insured has a duty to disclose to the insurer, before the relevant contract of insurance is entered into, every matter that is known to the insured, being a matter that -

(a) the insured knows to be a matter relevant to the decision of the insurer whether to accept the risk and, if so, on what terms; or

(b) a reasonable person in the circumstances could be expected to know to be a matter so relevant”.

75. *Insurance Contracts Act* 1984 (Cth), s 21(1).

ine insurance, an insurer in the context of general insurance can only avoid entirely the contract of insurance for non-disclosure where that non-disclosure is fraudulent, but not where the insurer would have entered into the contract of insurance upon the same terms had there been full disclosure. Where the non-disclosure is not fraudulent then the insurer's liability is limited to an amount which would place the insurer in a position had there full disclosure.⁷⁶ Clearly, the remedies of the insurer for non-disclosure are significantly restricted. Significant also is the imposition of a causality requirement in a manner similar to that now implied by the House of Lords in *Pan Atlantic* and the imposition of concept of "proportionality" where the non disclosure complained of is not fraudulent.

Do these developments in the field of the Australian law of general insurance demonstrate, or suggest, that the doctrine of utmost good faith in marine insurance is out of date? In principle, No. A contract of insurance remains a contract based upon speculation. The underwriting of that speculation is very largely dependent upon the underwriter's ability to properly assess the risk. It remains the case that despite the ever increasing general information held by the insurers, the assured normally has the particular and peculiar knowledge of its venture. Normally the assured knows the facts which are ultimately determinative for the acceptance of the risk and, if so, upon what conditions and for what price. Nevertheless, it is my view that the present manifestation of that duty of utmost good faith in the field of marine insurance is in need of reform.

Developments of the common law in Australia

I will assume that, in the absence of specific legislative enactment on the point, the Australian courts would follow the lead of the House of Lords in *Pan Atlantic*. They will imply into the *Marine Insurance Act* that redress for non-disclosure, or indeed misrepresentation, must be conditional upon that non-disclosure having actually induced the insurer to

76. Section 28 of the *Insurance Contracts Act* 1984 (Cth) provides:

"(1). This section applies where the person who became the insured under a contract of general insurance upon the contract being entered into -

(a) failed to comply with the duty of disclosure; or

(b) made a misrepresentation to the insurer before the contract was entered into, but does not apply where the insurer would have entered into the contract for the same premium and on the same terms and conditions even if the insured had not failed to comply with the duty of disclosure or had not made the misrepresentation before the contract was entered into.

(2) If the failure was fraudulent or the misrepresentation was made fraudulently, the insurer may avoid the contract.

(3) If the insurer is not entitled to avoid the contract or, being entitled to avoid the contract (whether under sub-section (2) or otherwise has not done so, the liability of the insurer in respect of a claim is reduced to the amount that would place him in a position in which he would have been if the failure had not occurred or the misrepresentation had not been made".

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enter into the contract of insurance upon the terms and conditions it did. Such an approach resolves, at least to some degree, two difficulties which might otherwise require reform: First, it avoids the situation which existed before *Pan Atlantic*, by which the law, in England at least, allowed an insurer to avoid a contract entirely where full disclosure would not have made any difference to its accepting the risk in fact. Secondly, it adds a reference to the "particular insurer" as well as the "prudent insurer". That is although the standard of materiality remains objectively that of the "prudent insurer", the subjective effect of the non-disclosure on the particular insurer is ultimately determinative. Both of these developments have the effect of curtailing imprudent underwriting practices by particular underwriters. It would no longer be open to such underwriters to seek the court's assistance to avoid such an imprudently struck bargain upon the basis that a hypothetical "prudent insurer" would have been influenced by the circumstance had it been disclosed. This is especially the case where an underwriter accepts a risk upon the basis of the risks' acceptability within the underwriter's own global risk management strategy. That is, if it could be shown that an underwriter accepted the risk upon the predominant or sole basis that its information and systems deem the risk acceptable, then it could hardly be said that the underwriter was actually induced to enter into the contract by any disclosure or non-disclosure of the assured. Avoidance of the contract of insurance for non-disclosure in those circumstances will be seriously challenged by the requirement of actual inducement. It seems likely that the principles established by the House of Lords in *Pan Atlantic* in this respect would be adopted by the Australian courts. But is this enough?

There is a rather draconian element in the present law which allows the total avoidance of the contract of insurance for the assured's non-disclosure, fraudulent or otherwise. This is especially the case in marine insurance where materiality, in theory, can be so remote from the actual assured as a circumstance constructively known by the assured and influential to the mind of prudent insurer, but actually unknown and irrelevant to the assured.⁷⁷ Of course, one must take into account that ordinarily the players in a bargain of marine insurance are not consumer and highly resourced insurance company, as is the case ordinarily in general insurance. Parties to a marine insurance contract tend toward greater, although rarely equal, equality of bargaining power. They ordinarily engage in contracts of marine insurance as a matter of course, not exceptionally. If these are the circumstances in which the marine insurance is written then the law is perhaps right to demand higher standards than those expected in the general insurance marketplace. Indeed, many of the reforms implemented by the *Insurance Contracts Act* were aimed at redressing this perceived imbalance apt for the typical insured in a general insurance situation.

77. *Marine Insurance Act* 1909 (Cth), ss 24(1) and 24(2).

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Be that as it may, such a blanket remedy for non-disclosure, regardless of the nature of the parties to the contract, in my view, could involve a risk of injustice. While I would welcome reform in this area of marine insurance, one can perceive considerable difficulties in the evolution of an appropriate system of remedies. As discussed above, a concept of "proportionality" would be attractive. However, it does seem to involve an arguably unacceptable element of self-insurance and temptation inappropriate to marine insurance. Before such evolution is complete, the need for causality as laid down by the House of Lords in *Pan Atlantic* provides a partially effective method of stemming inappropriate access by non-induced insurers to this rather draconian blanket remedy. However, it does nothing for the plight of the assured who falls before the actually induced prudent insurer.

In *Barclay Holdings (Australia) Pty Ltd v British National Insurance Co Ltd*,⁷⁸ a case concerning the common law, I expressed the view that the test of materiality⁷⁹ as endorsed by the English Court of Appeal in *CTI*, was too broad in scope "because the latter may impose an obligation on an insured to disclose virtually endless material about the insured's past".⁸⁰ I expressed concerns that it was unreasonable to expect an insured to know, in any detail, the kinds of considerations which may influence the decisions of insurers,⁸¹ let alone the kinds of consideration which may influence the decision of a foreign insurer in a foreign marketplace.⁸² Yet that was the extent of disclosure required by the test of materiality laid down in the *CTI* case, and therefore by the English *Marine Insurance Act*. I preferred the local test, expressed by Samuels J in *Mayne Nickless Ltd v Pegler*,⁸³ where his Honour spoke of a circumstance being "material" if it "would have reasonably affected the mind of a prudent insurer in determining whether he will accept the insurance, and if so, at what premium and on what conditions". The words "reasonably affected" in Samuels J's test, I considered:⁸⁴

"to require that the effect on the mind of the insurer... should be something more than the effect produced by information which the insurer would have been generally interested to have. If, though interested to

78. (1987) 8 NSWLR 514 (CA).

79. Kerr LJ in *Container Transport International Inc v Oceanus Mutual Underwriting Association (Bermuda) Ltd* [1984] 1 Lloyd's Rep 476 (CA), at 49, said the word "influenced" in the test, "which would influence the judgment of a prudent insurer" meant "that the disclosure is one which would have had an impact on the formation of his opinion and on his decision-making process..."

80. (1987) 8 NSWLR, at 518.

81. *ibid*, at 517.

82. *ibid*, at 518.

83. [1974] 1 NSWLR 228 (SC), at 239.

84. (1987) 8 NSWLR, at 517.

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have it, such information would not, in the end, have determined for a reasonably prudent insurer the acceptance or rejection of insurance, the setting of the premium or the attachment of conditions, there is not such effect on the mind as requires disclosure. The information, although of interest, is not material. As such it is not information which must be disclosed by the insured”.

Upon reflection, this was in effect, as was the “decisive” influence test submitted in *Pan Atlantic*, an attempt to move the desirable causal requirement, or lack thereof, from relevance to the creation of the contract to the test of materiality. Of course, the test of materiality favoured by me in *Barclay Holdings* did not go as far as the “decisive influence” test unsuccessfully advocated before the House of Lords in *Pan Atlantic*. But it may have gone further than that endorsed by the House of Lords in *Pan Atlantic*. By that decision, a material circumstance is one that would have an effect on the mind of a prudent insurer.⁸⁵ While it is difficult to ascertain, the practical effect of a test of materiality based upon notions of causality and a non-disclosure causality requirement in the creation of the contract of insurance may be identical, if not very similar. Yet, even if that is the case, such a broad concept of “materiality” as applies in the context of the *Marine Insurance Act* continues to impose an indisputably burdensome responsibility on the assured. The assured must disclose all that would influence the judgment of a prudent insurer, having regard to all material circumstances. No relief offered to the assured. For the reasons which I expressed in *Barclay Holdings* I consider that it is desirable that the duty of disclosure be made somewhat more narrow than that which is presently the case.

I return to the question posed by my title. Is the doctrine of utmost good faith so out of date that it should be entirely abandoned? The answer is no. In Australia, there is remedial legislation designed to protect those who bargain from misrepresentations.⁸⁶ Other legislation, in State jurisdictions, allows certain bargains to be re-written by the courts in certain circumstances.⁸⁷ Nevertheless, the remedies and redress presently available, by the common law or otherwise, would not adequately or appropriately fill the high gaps which would be left by the abandonment of the duty of utmost good faith, in any field of insurance. Indeed, if the doctrine were to be abandoned I have no doubt “the common law, being the creation of reason”⁸⁸ would ultimately arrive again at a substantially similar doctrine purely because the essential nature of insurance has not changed since its early days, nor is there reason to suppose

85. *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd* [1994] 3 WLR 677 (HL), at 682-683, 695-696, 705, 713 and 714.

86. See, for example, *Trade Practices Act* 1974 (Cth), s 52; *Fair Trading Act* 1987 (NSW), s 42.

87. See, for example, *Contracts Review Act* 1984 (NSW).

88. *Mason v Tritton* (New South Wales Court of Appeal, unreported, 30 August 1994), at 23 of the author’s judgment.

that it will so change in the future. In some way, the law would have to oblige assureds to supply insurers with vital, relevant information to permit insurers to assess the risk and, if accepted, to fix the premium.

The requirement of utmost good faith and the judicial method

A concept such as “utmost good faith” will often draw criticism upon the basis that, by its vague wording, it is uncertain and without concrete or at least clear meaning. This drove the Appellate Division of the Supreme Court of South Africa in *Mutual and Federal Insurance Co Ltd v Oudtshoorn Municipality* to say that the expression *uberrima fides* was an “alien, vague, useless expression without any particular meaning in law”, not being capable of being used in their law “for the purpose of explaining the juristic basis of the duty to disclose a material fact”. That being so, the Appellate Division was of the firm view that “our law of insurance has no need for *uberrima fides* and the time has come to jettison it”.⁸⁹

Yet, the juristic base of much of the common law of Australia rests upon concepts and doctrines which, when considered in the abstract, are both uncertain and without meaning. For example, fundamental to the law of negligence are the concepts of the “reasonable person”, “reasonable foreseeability” and “proximity”.⁹⁰ Equity looks to concepts such as “unconscionable dealing”⁹¹ and the “unconscientious departure” from the subject matter of an assumption.⁹² Contract permits recovery of damages in the event of breach if such loss “may reasonably be supposed to have been in the contemplation of both parties” at the time they made the contract, as the probable result of the breach of it.⁹³ One seeks to

89. 1985 (1) AD 419 (SASC(App.Div)), at 433. The Court held, after a review of the manner of reception of law into South Africa and the juristic development of the law relating marine insurance, that the law of South Africa did not recognise *uberrima fides* as category of good faith. Rather, the Roman-Dutch juristic base of South African law recognised only *bona fides* and *mala fides* as categories of good faith. An Ordinance of 1570 made a contract of insurance “indisputably a contract *bonae fidei*”: *ibid*, at 432. Upon that basis the Court held that materiality was to be tested by deciding, upon consideration of the relevant facts of the particular case, whether or not the undisclosed information or facts were reasonably relative to the risk or the assessment of the premiums, adjudged by the reasonable man: *ibid*, at 435.

90. See, for example, *Jaensch v Coffey* (1984) 155 CLR 549, per Gibbs CJ and Deane J. 91. See, for example, *The Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447.

92. See, for example, in the context of estoppel by conduct, *The Commonwealth v Verwayen* (1990) 170 CLR 394, at 444-445 per Deane J.

93. *Hadley v Baxendale* (1854) 9 Ex 341, at 355; 156 ER 145, at 151. Although the operation of that rule does not require that the parties have actually subjectively contemplated such a loss. It is enough that a reasonable person in the position of the parties would have realised that the damage was not an unlikely consequence of the breach. See *Czarnikow Ltd v Koufos* [1969] 1 AC 350 (HL).

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overturn criminal convictions upon the ground that they were “unsafe and unsatisfactory”.⁹⁴ Or to claim that an opponent’s legal professional privilege has been impliedly waived because it would be “unfair” or “misleading” that it be maintained.⁹⁵ Before a lawyer can even begin to imagine the uncertainty of these concepts he or she must become the subject matter of another one: that is they must be of “good fame and character”.⁹⁶ The point to be made is that our law is often founded upon doctrines of wide and varied import. This is not by accident. We should respect and be thankful for their breadth. They may indeed introduce elements of uncertainty. But they permit courts — judges and juries — on behalf of the community to continue the never-ending search for justice in the particular case.

The judicial method in common law countries is assisted by concepts such as the doctrine of utmost good faith. Only when the courts are armed with such concepts can they fairly resolve the particular circumstances of the many and varied cases coming before them, doing so in a just and fair manner. Inflexible *formulae* and precise rules, whilst they may achieve certainty in the marketplace, lend themselves to injustices; the applicable doctrines having no inherent flexibility to deal with the nuances of differing fact situations. At the risk of Denning-like recitation of my dissenting opinions, I can instance a recent example in my own Court. The New South Wales Court of Appeal considered the rule which prohibits a beneficiary to a will from benefiting under that will if they killed the testator. The particular circumstances of the case were that a woman had, after years of abuse from her husband, finally killed him. Under the husband’s will the wife was to benefit. In criminal proceedings the defence of “diminished responsibility” had been established. The majority of the Court of Appeal, holding themselves bound by the inflexible forfeiture rule, decided that the woman was prohibited from benefiting under the will. Not a cent could she recover, although the evidence disclosed that by her work and efforts in the jointly owned business over many years, she had contributed most materially to the husband’s property and estate. It was, in my view, an unjust result. But it was one which the inflexible rule of law demanded.⁹⁷ Certainty triumphed over justice in the particular case, which suggested a more finely tuned outcome.

It is therefore not a proper criticism, in itself, that the doctrine of utmost good faith in marine insurance and other insurance law is of wide

94. See, for example, *Morris v The Queen* (1987) 163 CLR 454; *Chidiac v The Queen* (1991) 171 CLR 432.

95. *Attorney-General for the Northern Territory v Maurice* (1986) 161 CLR 475, at 487-488, 483, 492-493 and 497. See also *Goldberg v Ng* (New South Wales Court of Appeal, unreported, 11 July 1994).

96. See, for example, *Legal Profession Act 1987* (NSW), s 11. See also *Ziems v The Prothonotary of the Supreme Court of New South Wales* (1957) 97 CLR 279; *The Council of the Law Society of New South Wales v Foreman* (New South Wales Court of Appeal, unreported, 5 August 1994).

97. *Troja v Troja* (1994) 33 NSWLR 269 (CA).

import and of wide potential and sometimes unjust application. In theory, a doctrine of such a nature is desirable as it provides the courts with a legitimate means of achieving just and fair results in each particular case. It encourages disclosure of relevant information by assureds to insurers. It reduces the business costs of interrogation which may otherwise be based on ignorance of material circumstances. It has endured in insurance for a very long time. It is a feature of the rules of a global industry in which Australia's share is modest indeed.

Conclusion - the doctrine is not out of date; but requires more treatment

The nature of the insurance contract having remained basically the same through the ages, perpetuating the need for substantial disclosure, it cannot be properly said that the doctrine of utmost good faith is out of date. However, the contemporary manifestation of this doctrine in the context of marine insurance is, in my view, in need of further substantive reform.

It is imperative that an element of causality be introduced into the doctrine. In that respect the decision of the House of Lords in *Pan Atlantic* may offer a desirable judicial reform of the pre-existing understanding of the law. It is similarly desirable that the test of materiality should be modified so as to control somewhat the onerous burden which it now presents to the assured who seeks faithfully and honestly to comply with it. However, that modification should not go so far as to encourage an unduly restrictive flow of information between the parties.

Finally, consideration needs to be given to the evolution of a system of remedies for non-disclosure whereby certain types of non-disclosure will not automatically entitle the insurer to avoid the contract entirely. This has been achieved in Australia in the field of general insurance. A like reform should be considered in the international business of marine insurance. But the lead will have to come from those countries which are most heavily involved in writing marine insurance. That is why international conferences such as this provide a useful forum for the exchange of experience and the discussion of desirable reform which may catch the ear of a legislator or, more likely, a judge having power to do something to secure reform.

MARINE INSURANCE - IS THE DOCTRINE OF "UTMOST GOOD FAITH" OUT OF DATE?

by Graydon S. Staring*

The Background of American Law

Although many threads of uniformity run through American law, it is various because of our federal system and one must take care in generalizing about it. Marine insurance, by virtue of the Admiralty Clause in the Constitution, falls under Federal control, potentially in its entirety. In practice, however, the extent of Federal control became vague with the *Wilburn*¹ decision in 1955, which is possibly the Supreme Court's murkiest and worst ever on the allocation of State and Federal authority. The case involved warranties in the insurance of a houseboat on an inland lake and the Court expressed no limitation of vessels or geography.

Happily, for my task if not for other reasons, the rule of utmost good faith as it relates to disclosures is almost universally regarded as one of the established Federal rules, although decisions around the country vary somewhat in the details of its expression and application. I will not therefore trouble you with the confusion caused by the *Wilburn* case, beyond observing that it is the reason for a few variant decisions and an occasional hedge in the following discussion.

Our early writers viewed English and American Common Law and, to an important extent, the Continental Civil Law of insurance as a system uniform in principles and, for the most part, in rules. Most of our States have a common heritage of English Common Law. The great exception is Louisiana, where the legal system is that of the French Civil Law. The doctrine of utmost good faith was attributed in the United States, however, to both French and English sources and has come down to us with the understanding that it generally conforms to English law. Alone among the States, California has a chapter (66 sections) of its Insurance Code devoted to marine insurance. It was codified from English, American and French sources in the Nineteenth Century and many of its provisions are similar to those of the English Marine Insurance Act, 1906. I may therefore refer at times to the California code as a general authority.

* Partner Lillick & Charles, San Francisco.

1. *Wilburn Boat Co. v. Fireman's Fund Insurance Co.*, 348 U.S. 310, 1955 A.M.C. 467 (1955) left marine insurance policies to be governed by Federal rules, when they are established, and otherwise by State rules, without explaining how to determine when a Federal rule is established.

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Utmost Good Faith, Generally

Justice Story gave us an early definitive statement of the disclosure rule in *M'Lanahan v. The Universal Insurance Co.*, 26 U.S.(1 Pet.) 170, 185 (1828):

The contract of insurance has been said to be a contract *uberrimae fidei*, and the principles which govern it are those of an enlightened moral policy. The underwriter must be presumed to act upon the belief that the party procuring insurance is not, at the time, in possession of any facts material to the risk which he does not disclose...

Fifty-five years later, in *Sun Mutual Insurance Co. v. Ocean Insurance Co.*, 107 U.S. 485, 510 (1883), the Court provided a more expansive statement, by quoting *Duer* with approval:²

The assured will not be allowed to protect himself against the charge of an undue concealment, by evidence that he had disclosed to the underwriters, in general terms, the information that he possessed. Where his own information is specific, it must be communicated in the terms in which it was received. General terms may include the truth, but may fail to convey it with its proper force and in all its extent. Nor will the assured be permitted to urge, as an excuse for his omission to communicate material facts, that they were actually known to the underwriters, unless it appears that their knowledge was as particular and full as his own information. It is the duty of the assured to place the underwriter in the same situation as himself; to give him the same means and opportunity of judging of the value of the risks...

While courts vary their words somewhat, the *Sun and M'Lanahan* cases continue to be cited as controlling authorities.³

Exceptions to the duty of disclosure by the prospective assured correspond to those in English law. They include the underwriter's knowledge or duty to know, waiver, exception of the risk from the policy and exclusion by warranty. Both the underwriter and the assured are expected to be aware of usages of trade and political and general causes affecting the risks underwritten, sufficiently at least in the case of the underwriter, to prompt the necessary questions about them.⁴ Apart from such matters, the knowledge to which the assured is held is his actual knowledge, either in person or through agents; he is not said to have a duty of diligence in collecting knowledge about the risk, but he may be held to know of some matters he ought to know, and will in practice surely not be allowed to pursue a studied course of ignorance. While the assured may have to disclose opinions of third persons concerning the risk, he does not have to give his own and, in recognition of a limit of realism, he

2. 2 J. Duer, *The Law and Practice of Marine Insurance* 398-99 (New York 1845).

3. *Contra*, *Albany Ins. Co. v. Anh Thi Kieu*, 927 F.2d 882, 1991 A.M.C. 2211 (5th Cir. 1991) (departing from prior Fifth Circuit decisions).

4. See Cal. Ins. Code § 333, 335, 336, 1900; 2 Duer 552, 559-60.

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need not disclose, however true it be, that he himself is a scoundrel! *Sun* at 510.

Duration of the Duty

The duty of disclosure (including correction of representations) clearly exists beyond the placement and up to the time of inception of the policy, under the *M'Lanahan* case, where Story, J. said (at 185):

The true principle deducible from the authorities on this subject is, that where a party orders insurance, and afterwards receives intelligence material to the risk, or has knowledge of a loss, he ought to communicate it to the agent, as soon as, with due and reasonable diligence, it can be communicated, for the purpose of countermanding the order, or laying the circumstances before the underwriter.

There is no doubt that this rule applies to renewals, and the California Code is explicit that the same rules apply to any modification of the contract.⁵ The duty may continue during the policy period and require disclosure of an increase in the risk due to a change made by the assured in trade or structure or other circumstances, or where a cancellation right is available.

Mutuality

Duer said the duty of utmost good faith is owed by both insurer and assured, each to the other.⁶ He was probably influenced by the philosophical consideration of equality and mutuality in contracting, rather than any reports of litigation of insurer bad faith. Until recently, such reports have been non-existent or rare, and it is not remarkable that the many cases dealing with concealments by assureds would not mention a principle of mutuality. Recent litigation of insurer bad faith, usually in respect of claims practices, has spilled over into marine insurance, where the protection of assureds has corresponded to that in non-marine practice, especially in what may be called "consumer" cases. While the classic precedents on utmost good faith have not been commonly cited in such cases, there can be no doubt that the mutuality of the doctrine, when put in issue, will be confirmed in accordance with Duer's precept. The possibilities for its application to underwriters in placements, however, will no doubt continue to be rare.

5. Cal. Ins. Code § 361.

6. 2 Duer 380-81; accord, Cal. Ins. Code § 332.

Materiality - What Is It?

Of course, only material facts are those that must be disclosed and not misrepresented; it matters not what others the assured keeps to himself. But which are material and which are not is an issue at the core of almost every disclosure dispute, bringing into focus two questions about the test of materiality: (1) by whose mind is it to be tested, that of the actual underwriter or a hypothetical prudent one; and (2) what effect upon that mind is critical?

It is remarkable, in the recent notable English cases dealing with these questions,⁷ that the courts have respectfully examined four Nineteenth Century American treatises⁸ in search of the understanding of the times as to the Common Law. It is perhaps equally remarkable that these treatises required careful interpretation and ultimately pointed them in different directions. It is not remarkable, therefore, that the signals have been differently read in the United States.

Prudence or Actuality?

The Supreme Court has never discussed the question squarely, but it is hard to read the words of the *M'Lanahan* case as having anything to do with the actual underwriter's mind. Story, J. states that the underwriter "must be presumed to act upon the belief" that he has been told everything material (at 185). If this is a matter of presumption, it would seem that the actual underwriter and his mind have nothing to do with it; he goes on to say that materiality "rests upon the judgment of underwriters and others who are conversant with the subject of insurance" (at 188) and omits any meaningful reference to the actual underwriter.

In the *Sun* case, the Court appears to persist in that view. It refers to a "prudent underwriter," and not to the actual one, and reverses a judgment for the assured, holding a policy avoided for non-disclosure and calling the matter so clear that there is no need for "proof of usage or opinion of those engaged in the business" (at 509-10). Most Federal courts appear to have followed this view.⁹

7. *Container Transport Int'l Inc. v. Oceanus Mutual Underwriting Ass'n*, [1984] 1 Lloyd's Rep. 476 (C.A. 1984); *Pan Atlantic Ins. Co. v. Pine Top Ins. Co.*, [1994] 3 Re LR 101 (H.L. 1994).

8. J. Duer, op. cit. note 2; J. Kent, *Commentaries on American Law* (New York 1828); W.P. Phillips, *A Treatise on the Law of Insurance* (Boston 1823; 5th ed. 1867); T. Parsons, *Treatise on the Law of Marine Insurance* (Boston 1868).

9. But in *Puritan Ins. Co. v. Eagle S.S. Co S.A.*, 779 F.2d 866, 1986 A.M.C. 1240 (2d Cir. 1986) the court affirmed a decision against the insurer, on the ground that the resistant underwriter would not have relied on certain undisclosed prior losses and would have written the policy in any event, based on evidence that he relied on the judgment of lead underwriters rather than information furnished by the assured. This decision can be reconciled to the main stream as an instance of waiver, the underwriter's choice of business procedure having rendered disclosure irrelevant.

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Another view is found in California, a State of considerable maritime importance, where the code (based on some of the same authorities cited for the contrary view) provides:

Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract, or in making his inquiries.

The party to whom the communication is due is the actual underwriter, but expert testimony can be taken on the question of probable and reasonable influence. In the contest between Federal and State law, underwriters are happy to rely on the California law in cases that arise rather frequently on yacht policies, and assureds can see no comfort in claiming the existence of an overriding Federal rule.¹⁰

The Test of Influence

The second serious question about the materiality test concerns the effect of the undisclosed or misrepresented fact on the mind of the relevant underwriter, actual or prudent. This question also has never been squarely posed and discussed by the Supreme Court, but it has been impliedly dealt with inconsistently. An early expression of Justice Washington, on circuit, strongly indicated a test of actual inducement or causation like that recently announced in England.¹¹

In *M'Lanahan*, Story, J., for the whole Court, with Washington therefore not dissenting, referred to "the ultimate fact itself, which is the test of materiality--that is, whether the risk be increased so as to enhance the premium . . ." and never suggested the materiality of the effect on the actual underwriter. This formula appears the same as that of Steyn, J. in the Court of Appeal, recently rejected in the House of Lords in *Pan Atlantic Insurance Co. v. Pine Top Insurance Co.*, [1994] 3 Re LR 101 (H.L. 1994).

In *Sun*, the Court premised its reversal on the view that the undisclosed fact was "important to the underwriter as likely to influence his judgment in accepting the risk," and that, "[h]ad it been known, it is reasonable to believe that a prudent underwriter would not have accepted the proposal as made" (at 509-10). The Court approved Duer's test that the fact "would probably have influenced the terms of the insurance" (at 510).

These expressions of the Court in two leading cases are consistent with the "increased risk" test but also with the "decisive influence" test that

10. *E.g.*, *Reliance Ins. Co. v. McGrath*, 671 F. Supp. 669, 1987 A.M.C. 1916 (N.D. Cal. 1987) (non-disclosure of previous striking of hull and maintenance neglect on renewal of policy); *Hartford Ins. Co. v. Garvey*, 1989 A.M.C. 652 (N.D. Cal. 1988) (misrepresentation of pleasure use only and no prior insurance).

11. *Clason v. Smith*, 5 F. Cas. 990, 991, No 2868 (C.C. D. Pa. 1812) ("If in point of fact, it had no influence... then it is impossible to say that it was material.").

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was also rejected by the majority in *Pan Atlantic*. The words of these decisions do not crystalize the test and, in my view, are sufficiently malleable to permit a fairly open consideration of the question and possibly to accommodate, for example, the result in *Pan Atlantic*, if that found favor.

It remains to add that, where the underwriter asks a question, especially if it be asked and answered in writing, there will be a strong, and possibly conclusive, presumption that the answer is material.

Evidence, Expert and Otherwise

The opinions of experts are no doubt admissible on the question of materiality no matter what test of materiality be employed from the range of those considered. *M'Lanahan* tells us that the inquiry is "dependent upon the judgment of underwriters and others, who are conversant with the subject of insurance." (at 188). In *Sun*, as I have said, the Court considered questionable cases to be subject to "proof of usage or opinion of those engaged in the business" (at 509).

The evidence of the actual underwriter presents additional problems, especially if the test involves the effect of the undisclosed fact upon himself. If he were qualified (as one would hope), he might surely testify as an expert on usages and the importance of particular facts, if such testimony from a principal were thought valuable. He may undoubtedly testify as to his own previous practice, if any, in responding to facts of the character of what was not disclosed. But conventional rules of evidence would seem to preclude, as speculation, his testifying as to whether, and on what terms if any, he would have accepted the risk. Many good underwriters could be expected to recognize the merit of this point and, while resenting that they were denied fair consideration of a fact, take the position in some cases that they could not fairly say now what they would have done with it a year or two ago.

Intent and Innocence

Story, J. said in *M'Lanahan* that the right to disclosure is unaffected "even if there be no intentional fraud" (at 185). And in *Sun* the Court said that the duty "is independent of the intention, and is violated by the fact of concealment even where there is no design to deceive" (at 510). Actual intent, negligence, inadvertence, and in the case of misrepresentation even actual knowledge, are irrelevant. No substantial doubt has been cast on this proposition, although sports may appear among the cases in the lower courts.¹²

12. See, e.g., *Knight v. U.S. Fire Ins. Co.*, 804 F.2d 9, 13, 1987 A.M.C. 1, 6 (2d Cir. 1986) where the court, in disharmony with its other decisions, said that the standard for disclosure depended on "whether a reasonable person in the assured's position would know that the particular fact is material," but in the event held the policy avoided.

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Truth or Consequences

Concealment of anything material, whether by non-disclosure or misrepresentation, makes the contract voidable at the instance of the other party, who may declare it avoided and defend against all further claims or go to court for a judgment of rescission and recovery of payments already paid. If the insurer takes this course, he must return the relevant premium or offer to do so. If he continues to collect premiums or does not act with reasonable promptitude after learning the truth, he will affirm the contract. He may, however, choose not to avoid the contract and resist only a particular claim on the ground of concealment relevant to it, while retaining premiums and paying other claims.

The Broker's Role

The broker is the agent of the assured, in arranging the insurance, and so the assured is charged, under the law of agency, with knowledge of the broker of which he himself is unaware. Thus the broker, in the exercise of care, is obliged to disclose material facts known to him from other sources, but not to his principal, or jeopardize his principal's insurance. The assured, on the other hand, is not insulated from risk by the good faith and diligence of his broker, acting without full and recent information. This is illustrated by the *M'Lanahan* case, where the owner's agent, following instructions to place insurance on the vessel, did not know that she had been lost a few days before, and it was held that the insurance depended on whether the owner had shown proper diligence to get word of the loss from Havana to the agent in Baltimore before the insurance incepted.

Fraudulent Claims

While we do not altogether lack for instances of fraudulent claims, there is little authority in America on the effect of their falsity under the doctrine of utmost good faith. While good faith is the expectation, the routine consequence of its lack is the loss of the claim. A false claim will not ordinarily, of itself, give cause to avoid the policy. But it often brings into focus a material misrepresentation or non-disclosure that may lead to avoidance, as when an inflated claim is made for loss of a vessel, the investigation of which leads to the discovery that her value or condition was falsified in the placing¹³

13. E.g., *King v. Aetna Ins. Co.*, 54 F.2d 253, 1931 A.M.C. 1940 (2d Cir. 1931) (\$ 40,000 on vessel bought for \$ 2,500); *Albany Ins. Co. v. Wisniewski*, 579 F. Supp. 1004, 1985 A.M.C. 689 (D. R.I. 1984) (\$ 1,500,000 on vessel bought for \$ 78,000); *Reliance Ins. Co. v. McGrath*, 671 F. Supp. 669, 1987 A.M.C. 1916 (N.D. Cal. 1987) (prior hull damage).

What Lies Ahead?

Pan Atlanticism?

As I observed above, the Supreme Court's judgments on materiality are far from adamant. The greatest pressure on materiality doctrine is undoubtedly directed at the relevance of the effect of non-disclosure upon the actual underwriter. Learned opinion has long been divided on this issue. There is no doubt a widespread instinct that an assured should not lose his insurance if it would have been accepted even with knowledge of the undisclosed fact. On the other hand, a test based on what the actual underwriter would have done makes the standard of conscience depend upon the inexperience, incapacity or gullibility of the other party, and also raises evidentiary problems in the mind of a trial lawyer. It must be impressive, however, that the Law Lords are unanimous on this point. Their opinion will be entitled to respectful consideration in the United States. Our Supreme Court has said that "[t]here are special reasons for keeping in harmony with the marine insurance laws of England, the great field of this business."¹⁴ It is therefore readily conceivable that the new English rule on this issue might be adopted in the United States, with or without the mechanism of adding the issue of causation to that of materiality.

The *Pan Atlantic* test for influence on a prudent underwriter appears to fall a little below the range of expression in the United States, which would call for a more nearly decisive effect upon him. This test might also be acceptable in company with the causation rule, but probably not otherwise.

Proportionality?

There has been no prominent agitation in the United States for a rule of proportionality, and I do not foresee any in the near future. We may probably put aside as unrealistic any notion of adjusting premiums; it would be an invitation to starve underwriters out of business by postponing substantial premiums to the event of a loss, when it would also not serve the assured since the proper premium would at least equal the amount of the loss.¹⁵

Proportioning the recovery to the insurance that could have been bought for the premium paid with full disclosure has a splendid equitable ring about it but presents serious practical problems giving it limited appeal. It would be easily workable where risks are rated according to manual or settled company practice and where the undisclosed fact places the risk in another rated category. It is probable that companies sel-

14. *Queen Ins. Co. v. Globe & Rutgers Fire Ins. Co.*, 263 U.S.487, 493, 1924 A.M.C. 107, 109 (1924); *Calmar S.S. Corp. v. Scott*, 345 U.S. 427, 443, 1953 A.M.C. 952, 965 (1953).

15. *American Eagle Fire Ins. Co. v. Eagle Star Ins. Co.*, 216 F.2d 176, 1954 A.M.C. 1263 (9th Cir. 1954).

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ling yacht policies have rating schemes that would lend themselves to this practice where, for instance, the fact is that the vessel is sometimes raced or used commercially or beyond the stated waters. We cannot, however, expect moral risk to be rated, or to be reasonably ratable after the fact. Overvaluation is a common problem. What insurance could the premium have bought on a fair disclosure? Much more, in fact, than the underwriter would be willing to sell. Should he pay the actual loss and return excess premium? Should he keep the premium and pay the actual loss? The difficulty is that he has been misled to insure a moral risk (sometimes a great one) that he could not have rated and never would have knowingly accepted. Apart from possibly a few instances arising under "consumers" yacht policies, where also the undisclosed facts prove to be easily ratable, there is little to inspire confidence in the assessment of proportional recoveries.

Consumerism?

The movement for consumer protection has been strong in the United States, as elsewhere, and non-marine insurers have made improvements in their underwriting and claims procedures for the benefit of consumers and also taken wise precautions for their own. Many of these insurers are also marine insurers at the "consumer" level. Marine insurance generally has been affected, although not so dramatically.

Non-marine insurance is entirely under the regulation of the States. Personal lines, such as life, health, automobile and homeowners' policies, are commonly regulated by statute in respect of underwriting process and terms, including the subject of representations and disclosures, as to which the tendency is to require written proposals including questions as to all the material facts.

State laws also commonly exclude marine insurance from their general provisions of this sort. But there is no sharp dividing line between the rules of marine and non-marine insurance, and the marine will inevitably feel the influence of the non-marine and of "consumerism" represented in the hundreds of thousands of people who now own pleasure craft. The owners of the larger ones, and many others also, place their insurance through experienced brokers; as to them, probably no great case for change can be made. Most do not, and these are most likely, through their presumed innocence, to put pressure on the utmost good faith doctrine. It would not be surprising to see the recognition of a usage that their policies should be based on the questions and answers on proposal forms, with materiality defined by such forms, as in much non-marine insurance.

Conclusion - Does Utmost Good Faith have a Future?

While *uberrima fides* has been bruised, scratched and pierced with an occasional arrow, I conclude that none of its wounds, nor all together, are mortal. Occasional criticisms that it does not reflect present views

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and conditions appear to spring from the notion that standards should chase morality downhill. The maintenance of utmost good faith enjoys strong support in the Maritime Law Association of the United States as well as professional insurance circles. While some adjustments may be made, I see no likelihood of its demise as a general principle in marine policies.

MARINE INSURANCE - IS THE DOCTRINE OF “UTMOST GOOD FAITH” OUT OF DATE ?

by Patrick J. Griggs

We are not alone in the UK in having an act of Parliament devoted exclusively to marine insurance.

Our Marine Insurance Act, 1906, is a remarkable piece of legislation. It was originally drafted single handedly by Sir McKenzie Chalmers. It is, in effect, a codification of the English law of marine insurance as it had developed over the previous 200 years.

In drafting the Bill, Chalmers reviewed over 2,000 reported cases.

Since the Act reached the statute book it has, of course, been endlessly analyzed, interpreted, and reviewed by courts and academics alike.

What I am doing today is simply taking another step in that process. Section 17 of the Marine Insurance Act reads:

“Insurance is *uberrimae fidei*. A contract of marine insurance is a contract based upon the utmost good faith and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party”.

As I said earlier, the Act is a codification of existing law. It is generally accepted that the doctrine of good faith was first stated and applied in a marine insurance case by Lord Mansfield in *Carter v Boehm* [(1766) 3 Burr. 1905]. It is worth quoting briefly from Lord Mansfield’s judgment:

“Insurance is a contract upon speculation. The special facts upon which the contingent chance is to be computed lie most commonly in the knowledge of the insured only; the underwriter trusts to his representation and proceeds upon confidence that he does not keep back any circumstance in his knowledge to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist.”

In other words, the assured knows the facts on the basis of which the underwriter needs to assess the risk and fix the premium. Those facts must be made known by the assured to the underwriter. Interestingly, Lord Mansfield, in his judgment, went on to say:

“The keeping back of such circumstances is a fraud, and therefore the policy is void. Although the suppression should happen through mistake without any fraudulent intention, yet still the underwriter has been deceived, and the policy is void, because the risk run is really different from the risk understood and intended to be run at the time of the engagement”.

It is important to note that at this stage of the development of the doctrine of good faith, Lord Mansfield believed that it applied to all con-

tracts not just insurance. In the context of the insurance contract, he wanted to penalise fraud and to protect the insurer where a non-fraudulent omission materially altered the risk that was being insured. As a statement of the doctrine promulgated by Lord Mansfield, no one could seriously criticise the terms of Section 17 of the Marine Insurance Act.

It is, however, in the detailed provisions of SS 18, 19 and 20 of the Marine Insurance Act which flesh out this doctrine that difficulties arise and, it may be suggested, the Act diverges from Lord Mansfield's basic doctrine.

Thus, Section 18 of the Marine Insurance Act provides:

“... the assured must disclose to the insurer ... every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known to him. ... Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk”.

The words of Section 18 have frequently been put under the microscope. The Act provides that a circumstance is material if it would influence “a prudent insurer” in fixing the premium or deciding whether to accept the risk. Remember that the assured's failure to disclose a material fact will enable the insurer to avoid the contract. Let's assume that, if the insurer had known the true position, the premium would have been 10% higher than it was. Is it not a disproportionate penalty for the non-disclosure that the assured should completely lose his cover? This “all or nothing” result has been much criticised and we shall be hearing today that other countries have adopted the principle of “proportionality” to avoid such a harsh result.

“Proportionality” can take one of two forms in practice. In the event of “innocent” as opposed to deliberate non-disclosure the insurer may pay a proportion of the claim, calculated by reference to the difference between the premium which would have been paid if all the facts had been known and the premium actually charged.

Alternatively the assured can be required to pay the correct premium before the claim will be paid. The UK Law Commission considered the advisability of introducing proportionality in its report entitled *Insurance Law: Non-Disclosure and Breach of Warranty* (1980) but rejected the proposal on the grounds that it would be too difficult to assess claims.

An example of the “all or nothing” result can be found in the case of *Inversiones Manria S.A v. Sphere Drake Insurance Co. plc* etc. (The “Dora”) [1989] 1 Lloyd's Rep. 69.

In that case Underwriters were held entitled to avoid the contract on the grounds of misrepresentation, as well as for non-disclosure of material facts. Justice may have demanded this result but underwriters did not prove, nor did they need to prove, that there was a causal connection between the loss of the vessel and the non-disclosure or misrepresentation. The consequences of non-disclosure can often be out of all proportion to the offence.

For obvious reasons this “all or nothing” consequence of non-disclosure has resulted in numerous court cases over the years the stakes

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can be high and there is no obvious middle course available to avoid the need for a trial.

The unilateral right of an insurer to avoid the policy has undoubtedly been abused from time to time. We all know of cases in which an underwriter has given notice of avoidance based on non-disclosure of a fact of doubtful materiality.

Given that the insurer has this powerful weapon, it is for the courts to police its use. This brings me naturally to *CTI v Oceanus Mutual Underwriting Association (Bermuda) Ltd.* [1984] 1 Lloyd's Rep. 476. In that case, our Court of Appeal firstly determined that what is material is to be determined by reference to what would have influenced the judgment of a fictional character known as the "prudent insurer", (NOT the actual insurer involved), in considering the risk.

As to what facts might influence that fictional character's judgment, Professor Malcolm Clarke has suggested that there are 3 types of fact:
Type A: a fact which is so material that, if the insurer had known of it, he would have refused to make the contract;
Type B: a fact which if the insurer had known of it, he would have made the contract but only on different terms;
Type C: a fact which, if the insurer had known of it, he would have considered it relevant but not so material as to cause him to demand different terms.

The Court of Appeal in the CTI case, determined that the non-disclosure of a type C fact (i.e. the lowest of the three) is sufficient to enable an insurer to avoid the policy.

There were many unsatisfactory aspects of the CTI decision, but the most worrying aspect was that the prudent insurer was not the "particular insurer" involved in the case, but a fictional character who was expected to set objective standards of underwriting.

Following the CTI decision, insurers, who would have accepted the risk even on the basis of full disclosure, could shelter behind the notion that the hypothetical prudent insurer would have regarded an undisclosed fact as material. As I said in a paper which I delivered at the Tulane Admiralty Law Seminar in March 1991, "surely an encouragement to reckless underwriting". Professor Ray Hodgkin of the University of Birmingham, said much the same in a recent paper when he wrote:

"My concern here is that in difficult economic conditions, one insurer, desperate for cash income, will let his underwriting abilities slip and underwrite what in a healthier economic climate he would not have underwritten.

When things go wrong and claims are made, it would appear that he can then fall back on the standards of the more circumspect insurer who would have been more careful from the start. Thus English law provides an escape mechanism for poor underwriting."

Following the CTI decision in the Court of Appeal it seemed to most objective people working in the insurance industry that, in what a horse racing man might call the Good Faith Stakes, the odds had been tilted too far in favour of underwriters. Put another way, the Courts were falling down on their duty to police the use of this potentially dangerous weapon

which the law had placed in underwriters' hands. In *The Law of Insurance Contracts*, Professor Clarke, poses a straight question: 'How can it be said that the consent of the insurer is vitiated, and that the contract should therefore be avoided, if he would have made the same contract on the same terms, even if the information had been disclosed?'

As many of you in this audience will know, this issue has recently been reviewed by our House of Lords in *Pan Atlantic Insurance Co. Ltd & Ors v Pine Top Insurance Co.* At the hearing before the House of Lords, Pan Atlantic began by attacking the first CTI proposition. They asserted that in every other area of the law, where a party seeks to escape from a contract by reason of misrepresentation, he must show that he himself relied upon that misrepresentation. Why should insurers be able to avoid, without showing that they themselves would have acted differently, but for the misrepresentation or non-disclosure? The stock response to that line of argument has always been that Section 18 uses the words "every circumstance is material which would influence the judgment of a prudent insurer" and makes no further reference to the actual insurer, or what he would have done. In this respect the House of Lords accepted Pan Atlantic's argument. All five Law Lords concluded that the 1906 Act had not fully codified the existing law and that the position of the actual insurer could not be disregarded. Lord Mustill said:

"If the misrepresentation or non-disclosure of material fact did not in fact induce the making of the contract (in the sense in which that expression is used in the general law of misrepresentation), the underwriter is not entitled to rely on it as a ground for avoiding the contract".

Lord Lloyd put the same proposition rather more directly when he said that the first question to be asked in any non-disclosure or misrepresentation case in the future would be:

"Did the misrepresentation or non-disclosure induce the actual insurer to enter into the contract on those terms?"

If the answer to that question is "no" that will be the end of the avoidance case.

This of course represents a radical change from the position following the CTI decision. In that case, all three judges in the Court of Appeal concluded that the position of the particular insurer was irrelevant and the position of the fictional "prudent" insurer was determinative. In rejecting that central part of the CTI decision, the House of Lords has tilted the odds back in favour of the assured and some would say, introduced a greater degree of fairness. The particular underwriter will now have to spend time in the witness box and, whilst there, will have to try to persuade the court that had he been in possession of all the facts, he would have decided either to refuse to write the risk or would have charged a higher premium.

So a causal link between the decision to enter into the contract and the non-disclosure or misrepresentation must now be proved, even if a causal link between the loss and the misrepresentation still remains unnecessary.

As I mentioned earlier, the Court of Appeal in CTI concluded that a material fact was one which a prudent underwriter would like to have

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had a chance of considering during the decision making process (what Professor Clarke called Type C information). Pan Atlantic argued (in the Pine Top case) that "judgment" in the context of S.18, M.I.A. meant the "final decision" whether to write the risk or what premium to charge. "Influence the judgment" they argued, meant "lead to a different final decision".

Unfortunately, the House of Lords was split on this issue. The majority, led by Lord Mustill, concluded that the insurer, seeking to justify having avoided the policy, did not need to show that the undisclosed or misrepresented facts would have had a decisive influence on a prudent underwriter's acceptance or rating of the risk. Please note that the fictional "prudent insurer" may no longer have a role to play in determining whether a fact is material but he does have a role to play in determining how knowledge of the fact would have influenced his judgment.

Lord Mustill said:

"A circumstance may be material, even though a full and accurate disclosure would not in itself have had a decisive effect on the prudent underwriter's decision whether to accept the risk and, if so, at what premium."

Lord Templeman and Lord Lloyd, whilst accepting that the standard to be applied was that of the fictional "prudent insurer", disagreed with the majority and accepted Pan Atlantic's argument. In the words of Lord Templeman:

"In my opinion (the judgment of a prudent insurer) cannot be said to be "influenced" by a circumstance which, if disclosed, would not have affected the acceptance of the risk or the amount of premium If this is the result of the judgements of the Court of Appeal in the Oceanus case, then I must disapprove of that case. If accepted, this submission would give carte blanche to the avoidance of insurance contracts on vague grounds of non-disclosure supported by vague evidence even though disclosure would not have made any difference".

Lord Lloyd concluded that to justify an avoidance, the fact must be one which would be seen by a prudent underwriter as increasing the risk, and that this perception of increased risk would have to translate itself into his declining to subscribe to or charging an increased premium for subscribing to the offered contract.

The net result, on a 3-2 majority, is that it is not necessary for the avoiding underwriter to show that the non-disclosed fact, if disclosed, would probably have had a decisive influence on the prudent underwriter's decision to write the risk or on the premium to be charged.

The degree of dissent between the judges in the House of Lords on this issue is illustrated by the fact that Lord Lloyd regarded the "decisive influence" test, which he favoured, as "precise and clear cut", giving "certainty and practicality", whereas Lord Mustill considered that the "decisive influence" test "presented great difficulties".

The practical effect of this decision is that for a fact to be material, an insurer must now show that the misrepresented or undisclosed fact actually induced him to enter into the insurance contract and was one which a prudent underwriter would weigh up when considering the risk.

It will continue to be necessary to call expert evidence directed to the question whether, in the words of Lord Mustill, the facts in issue “would have an effect on the thought processes of the (prudent) insurer in weighing up the risk”.

These experts will have to be prepared to explain how their judgment would have been influenced, rather than simply assert that it might have been influenced.

In this respect Lord Mustill’s judgment gives a clear warning:

“To enable an underwriter to escape liability when he has suffered no harm would be positively unjust and contrary to the spirit of mutual good faith recognised by Section 17 of the Act.”

The days when a particular underwriter could rely solely upon the judgment of an expert underwriter are over. He will now have to satisfy the court that the material non-disclosure or misrepresentation induced him to enter into the contract.

During the course of this session we will hear how this particular problem is tackled in other jurisdictions, but I know that even with this modification of the position in the United Kingdom, the odds will still be regarded as tilted heavily in favour of the insurer. That said, there is enough in the judgments in the House or Lords, particularly in the judgment of Lord Mustill, to discourage careless or cynical underwriters from seeking to avoid for non-disclosure or misrepresentation in borderline cases and it may turn out that in practice the assured’s position in cases of non-disclosure and misrepresentation may not be very different across the various jurisdictions whose laws we are examining today.

It is not my place to argue with judges of our highest court of appeal. However, where they disagree amongst themselves, I may, perhaps, be permitted to express a choice between two positions. May I say that I prefer the dissenting decisions of Lords Templeman and Lloyd on the issue of the “influence” on the “judgment” of a prudent insurer. It is, after all, the final decision whether or not to write the business and, if so, at what rate, that counts. No one is seriously interested in an underwriter’s thought processes whilst he’s considering the risk and before reaching his decision.

I have looked at the general obligation of disclosure, but we must not forget that Section 18 of the Marine Insurance Act lists a number of instances where the assured is relieved from an obligation to disclose. I needn’t go through these, but, for example, the assured is not obliged to disclose information which the insurer should know in the ordinary course of his business.

You will have noted that Section 17 of the Marine Insurance Act expressly states that the obligation of utmost good faith applies to both the insurer and the assured. The obligation which this places on the insurer has not frequently been the subject of litigation, but the duty undoubtedly exists. The circumstances in which an insurer may be in breach of his duty of good faith are, by definition, limited. The only two relatively recent cases in England are *Banque Financière de la Cité SA v Westgate Insurance Co. Ltd.* [1990] 2 Lloyd’s Rep. 377 and *The “Good Luck”* [1989] 2 Lloyd’s Rep. 238.

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For present purposes, and doubtless in direct contrast to the position in the United States, it is worth noting that a breach of the duty of good faith by the insurer does not result in a claim in damages (treble or otherwise). All it may do is give the assured the right to avoid the policy and recover the premium.

I have assumed so far that the duty of disclosure will be discharged directly between the assured and the insurer. Most insurance is in fact placed through the intermediary of an insurance broker and Section 19 of the Marine Insurance Act deals with this situation. It provides that the obligation rests as heavily upon the agent as it does upon the assured, because he is "deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him." Further, the agent must disclose "every material circumstance which the assured is bound to disclose..." The effect of this section is that the assured cannot be heard to say, following the avoidance of a policy for non-disclosure or misrepresentation, that he had passed the information to the agent and the agent had failed to pass it on. The failure of the agent is a failure of the assured. (*Russell v Thornton* (1859) 4 H & N 788) What is more, the broker has an independent duty of disclosure. Accordingly, the policy can be avoided for non-disclosure of a fact known solely to the agent but not known by his principal.

Many people make the mistake of believing that the obligation of utmost good faith is restricted to the time prior to the date upon which the contract is made. Section 17 of the Marine Insurance Act does not say so and in the "*Litsion Pride*" [1985] 1 Lloyd's Rep. 437, Hirst J. decided that the duty of good faith is present at the time when the contract is concluded and continues throughout the duration of the contract. There is no doubt that this duty also extends to any renewal of the policy.

In the event of the insurer detecting an instance of non-disclosure or misrepresentation he has a right to "avoid the contract". If the insurer elects to avoid the policy, the avoidance dates back to the placing of the policy. It is always open to the insurer to waive the breach and to defend the claim on some other basis, rather than avoiding the policy. This option may be exercised in order to avoid having to return the premium, which the insurer is obliged to do, if he avoids the policy, under Section 84 of the Marine Insurance Act, except where there has been "fraud or illegality on the part of the assured or his agents".

Perhaps the most extreme example of a breach of the obligation of good faith is to submit a fraudulent claim. It has been suggested that the making of a fraudulent claim under a policy, would be a sufficient breach of the obligation of good faith to allow underwriters to avoid the contract. This proposition was accepted by Mr Justice Kerr in The "*Michael*" [1979] 1 Lloyd's Rep. p. 55. In the case of non marine insurance, there is usually a specific clause in the policy form to the effect that a fraudulent claim will entitle underwriters to avoid the policy. It has not been the practice to include such a clause in policies of marine insurance, but the learned judge, in the "*Michael*" case, was prepared to hold that, even without such a specific clause, the obligation was precisely the same. It is still open to question whether, if there is a fraudu-

lent claim under the policy, this will vitiate all other claims under that policy, whether they be anterior to the fraudulent claim or otherwise.

I started this paper by drawing attention to the fact that Lord Mansfield in *Carter v Boehm* stated that deliberate non-disclosure is a fraud and that non-disclosure "through mistake" amounted to a deception of the insurer. I think that this is what Sir McKenzie Chalmers was trying to achieve by the words which he chose when drafting SS 17 to 19, Marine Insurance Act, 1906.

Pine Top perhaps takes us back a little closer to Lord Mansfield's concept. It may be some time before the House of Lords has an opportunity to complete the journey.

The question posed is: "Is the doctrine of utmost good faith out of date?"

Whoever takes the credit for the original doctrine, English common lawyers cannot escape responsibility for its development and in today's debate, I must defend the doctrine as best I can.

One of the oddities about the doctrine is that it only applies in insurance. Those of you who have read the House of Lords' Judgment in *Pan Atlantic v Pine Top*, particularly the Judgment of Lord Mustill, will appreciate that that was not Lord Mansfield's original intention when he pronounced judgment in *Carter v Boehm*. In Lord Mansfield's mind, a duty of fair dealing, in contrast to a concept of "caveat emptor" was applicable to all contracts, not just insurance contracts. Had the common law followed him in that respect, then a discussion such as the one we are having today would probably seem very odd indeed. As it is, the common law did not so develop, and insurers in particular have been the apparent beneficiaries of a charitable regime. Do they deserve it?

There have been far too many such cases since *C.T.I. v Oceanus* was decided where an insurer has acted cynically in seeking to avoid a policy. The level of cynicism is often in direct relationship to the size of the claim. That, however, is less the fault of the law for allowing insurers a preferential position, than the fault of the Courts or the legislature in not policing properly the exercise of the right. Such complaints do not answer the fundamental question.

As to the fundamental question, I have no doubt that a doctrine of utmost good faith remains almost as important today as it was in Lord Mansfield's time. My reasons for reaching that conclusion are based on the nature and need for insurance itself.

English law has long recognised the importance of insurance, not simply as (in some years) a contributor to our national economy, but as an essential element of all capitalist economies.

An entrepreneur may, by definition, be a taker of risks, but the availability of insurance to protect capital put at risk by those engaging in commerce is, I suggest, a vital element in any capitalist economy. Moving from the macro to the micro, we all own property and no one has come up with a better system of distributing the misfortunes of the few amongst the many, than insurance.

However, for insurance to fulfil its basic role of distributing those few misfortunes amongst the many, insurers must have the necessary funds.

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To do that they must be put in the position where they can charge the appropriate premium for every risk which they assume. Unless a mandatory minimum standard of accuracy in presenting each risk to the insurer is imposed on every insurance buyer then the less scrupulous buyers will avoid contributing their fair share to the fund necessary to meet those misfortunes, and that fund will prove inadequate.

I see the need for a mandatory minimum duty of disclosure and accurate representation as being just as important in ensuring a healthy insurance industry as governmental regulation of solvency margins and so on. It is against that ultimate goal of safeguarding the adequacy of insurers' funds that every objection to the duty must be measured.

I have no doubt the law can, and has in the past, overstepped the mark and has succeeded in protecting imprudent insurers from the consequences of their own carelessness or greed. Neither society in general, nor capitalism in particular, benefit by the continued survival of imprudent insurers. Whether in their greed to acquire business they underprice risks, or in their basic management they are unsound, when badly run insurance companies collapse everyone suffers. If the law slips into the error of protecting bad underwriters from claims, then the law is indeed an ass.

Although the House of Lords is to be applauded for having re established a causal link between the non-disclosure or misrepresentation and the actual insurer's underwriting of the risk, I feel the majority, by rejecting the "decisive influence on the prudent underwriter" argument have missed an opportunity to impose a minimum standard of prudence on the insurance industry, ironically at a time when, in London at least, every effort is being made to establish that standard on a voluntary basis as the reforms at Lloyd's show.

Are there any viable alternatives to a duty of disclosure? A duty to ask?: Opponents of the "duty to disclose" suggest the same result can be achieved by insurers taking the trouble to ask the right questions before issuing policies. That is, at best, only a partial answer, since the law would still need to protect insurers from those assureds who answered those questions less than frankly. We would still need a positive duty not to misrepresent, whatever we decided to do with the positive duty of disclosure. I don't think a duty to ask is the answer.

A causal connection: One of the most criticised features of the duty of utmost good faith in English law is the failure to insist on a causal connection between the facts which were not disclosed or which were misrepresented and the loss itself. What fairness is there, opponents ask, in the insurer being able to avoid paying a claim where the loss had nothing to do with the non-disclosure or misrepresentation about which he now complains? The apparent fairness of this objection seems to me to disregard the ultimate goal of the duty. As Lord Mansfield said in *Carter v Boehm*, the Underwriter has the right to expect full disclosure to enable him properly to price the risk.

Fair dealing is fundamental to the relationship between insured and insurer. Consistent underpricing, based on inadequate disclosure, will ultimately lead to lack of funds to meet claims. If the insurer could only avoid the policy where there was a causal connection between the loss

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and the non-disclosure or misrepresentation, there would no longer be the same incentive for the insured to make the full disclosure which the insurer needs for proper pricing, which takes me once again to proportionality.

Proportionality: English lawyers are regularly embarrassed by the apparent fairness of the European concept of proportionality. A classic example is our own Vice Chancellor, who, regretting the result of *Pan Atlantic v Pine Top* in the Court of Appeal seemed attracted by this concept. As I understand it, there are jurisdictions in Europe where the consequence of a non-disclosure or misrepresentation is not the avoidance of the entire contract but, if the non-disclosure or misrepresentation is innocent, some adjustment to the premium or the claim. In that respect, however, I see real problems.

If adjustment of premium is the mechanism used, the opportunity to adjust would only occur if there is in fact a claim. This would simply encourage non disclosure and misrepresentation because the insured would know that in the event of a claim, the worst that can happen will be that he is required to pay the premium he would have paid if the risk had been properly presented in the first place. This will result in regular under pricing of risks and shortage of funds to meet claims. This consequent diminution in the insurers' funds could only be compensated by charging a higher premium to all insurance buyers at the outset. In consequence, proportionality may be an immensely fair result between the parties to a particular policy, but it does not achieve the goal I have described above without penalising everybody. That and the difficulty in assessing what the increased premium should be, or whether the assured is entitled to say that his non disclosure was "innocent" are major problems. If the mechanism is adjustment of the claim pro rata to the underpayment of the premium, I accept the view of the UK Law Commission that assessment of the claim is too difficult.

The Reasonable Assured: It has often been suggested that there is some unfairness in making the reasonable underwriter rather than the reasonable insurance buyer the touchstone for materiality. In consumer insurance, I think I agree. In commercial insurance, I have no doubt I disagree. Businesses of any size, particularly those employing experienced brokers are not, in the words of Lord Mustill "..... lambs who need the winds of the common law rule to be tempered".

If, and it is a very big "if", anyone can draw a suitable dividing line between the consumer and the business man, and produce a lower minimum standard of disclosure for the former than the latter, I would not oppose it. But a minimum standard is still required.

To my mind, therefore, the duty of utmost good faith not only has a future, but is a necessary part of insurance law whether marine or non-marine. That is not to say that it is incapable of improvement, but the extent to which it needs to be improved, and can feasibly be improved, are both a great deal less than I believe its opponents realise.

THE DOCTRINE OF “UTMOST GOOD FAITH” IN THE MARINE INSURANCE LAW OF SOME CIVIL LAW COUNTRIES

by Jean-Serge Rohart*

After the presentations made by our English, American and Australian friends, it is an honour for me to take the floor on behalf of... the rest of the world!

In fact I confess that I would be at a loss to cover in the framework of this short paper a universal view of all the existing insurance laws of our planet. I necessarily had to restrict the scope of my study to some countries where civil law prevails, that is mainly my own country, but also Belgium, Denmark, Germany, Greece, Italy, the Netherlands, and Spain, as well as Argentine, Brazil and Japan. In this respect I have received very helpful assistance from our learned colleagues, Jean Coens (Belgium), Jan Erlund and Alex Laudrup (Denmark), Dr. Hans C. Albrecht and Volker Looks (Germany), Thanos Theologidis (Greece), Professor Francesco Berlingieri (Italy), Professor Tsuneo Ohtori and Professor Tomonobu Yamashita (Japan), Professor J. E. Japikse (Netherlands), José María Alcántara (Spain) and Professor José Domingo Ray (Argentina). I hereby express my deep gratitude to each of them as well as to Alexander von Ziegler (Switzerland) who, as from the outset, helped me to find my way around this complex spider's web.

The notion of “utmost good faith” is not a term of art in the marine insurance law of most of the civil law countries, for which all contracts of any kind, and not only the insurance contract, are to be executed with good faith.

For instance, in the French Civil Code, Article 1134 provides that any contract must be executed in accordance with good faith, whilst in the Italian Civil Code, two general provisions refer to good faith, stating that it must prevail in a) the interpretation (Art. 1366) b) the execution of any contract (Art. 1375). The same principle exists under Articles 1258 and 1288 of the Spanish Civil Code, reaffirmed for mercantile contracts by Article 57 of the Spanish Code of Commerce and under Article 1198 of the Argentinian Civil Code.

As a consequence insofar as the insurance contract is concerned, there does not exist under those systems (except in Germany and Brazil) any provision similar to Section 17 of the English Marine Insurance Act, 1906, stating that: “a contract of marine insurance is a contract based upon the utmost good faith”. In other terms, the insurance contract is generally not “*uberrimae fidei*”.

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Nevertheless, the legislations contemplated do contain certain rules under which if good faith has not been observed by either party, generally the insured, the insurance contract may be avoided by the other party.

These systems may be classified into two groups:

On the one hand the regulations influenced by the old continental tradition. This tradition consisted principally in the rules and usages respected in the XVIIth century, then collected and enacted in the French “Ordonnance de la Marine” of 1681, essentially based on the insurance rules applicable in Antwerp and Amsterdam, and themselves influenced by the Spanish and Italian texts. This continental tradition directly gave rise to the insurance rules contained in the French Code of Commerce of 1807, of which the primary aim was to protect the insurers against bad faith or negligence on the part of the insured. That explains the severity of the original Art. 348 of that Code, under which any non-disclosure, any misrepresentation affecting the judgement of the risk by the insurer, entitled the annulment of the contract. The French Code itself influenced in its turn other legislations, as those of Belgium, Germany, Greece, the Netherlands, Spain and Argentina.

On the other hand, the XXth century’s legislations having more neatly separated the treatment of good faith, negligence or bad faith, mainly under the influence of terrestrial insurance. That is the case of Denmark and Japan, as well as Italy and Spain after the 1980 Act and France after the law of 1967.

I. The strict application of the rule of “Réticence”

A. France and the 1807 Code of Commerce

The most ancient legal sources of French Marine Insurance law, as the “Guidon de la Mer”, one of our first codifications dating from the XVIth century, already contained a rule according to which the insurer must rely on the good faith of the insured (“La prud’homie de son assuré”), since the insurer is often unable to check the representations disclosed by the insured of the thing to be insured, as well as the risks to which it will be exposed.

If the “Ordonnance de la Marine”, enacted by Colbert in 1681 is silent on the subject, its Article 7 nevertheless compels the owner of the insured vessel to declare whether she is armed or not, sails on her own or in convoy. In commenting a century later on that ordinance, Valin will justify this rule by raising the principle that any false representation may ground either the annulment of the insurance contract “depending on the circumstances”, or the adjustment of the “premium in proportion to the additional risk incurred by the insurer had the risk been properly presented in the first place”.

In 1783, commenting in his turn on the same provision, Emerigon will refer to the concept of “dol” (intentional behaviour aiming to betray the other contracting party) to qualify any false representation or withholding of information on the part of the insured when seeking insurance.

These academic considerations finally led to the introduction of the

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concept of “*réticence*” (“intentional withholding of information”) in the Code of Commerce which came into force in 1807, under Article 348, so phrased:

“Any non-disclosure, any misrepresentation on the part of the insured, any discrepancy between the insurance contract and the Bill of Lading, which would reduce the insurer’s opinion of the risk or would alter its object, render the insurance contract null and void.

The insurance is null, even if the non-disclosure, the misrepresentation or the discrepancy would have had no influence on the occurrence of the damage or the loss of the thing insured.”

The term “*réticence*” has been defined as “the obstinate silence, the intentional withholding of information which should normally be disclosed”.

It therefore implies bad faith, even if the term “faith” either good or bad, is not used in the phrasing.

As soon as such “*réticence*” is proved by the underwriter, the contract is annulled, whatever may be the causation between the misrepresentation and the insured damage (Cass. civ. 8 May 1935, DH 1935, 378).

The rule contained in the Code of Commerce of 1807 was therefore of an absolute effect, based on the duty of true and complete disclosure bearing on the insured, in other terms on the “utmost good faith”.

But its application in the following hundred and sixty years gave rise to some controversial caselaw, leading our Courts to distinguish two sorts of situations:

On the one hand, some clear cases in which the false or incomplete representation, being wilful or at least negligent, had prevented the underwriter from making his exact opinion of the risk (Civ. 8 May 1935, Dor. Supp. 13, 337 ; Rennes, 15 July 1952, DMF 1952, 612): then the contract was automatically annulled.

On the other hand, some more ambiguous circumstances where the negligent misrepresentation a) had not reduced the underwriter’s opinion of the risk, and b) the underwriter, as a professional, knew or should have known of the actual situation improperly represented (Req. 26 oct. 1926, Dor. Supp 5, 4) : then the contract remained valid.

But even with this smoother application by the Courts, the system of “*réticence*” as set forth by Article 348 of the 1807 Code of Commerce was highly criticized by the practitioners, as not protective enough of the insured acting in good faith.

The reforms of shipping law and marine insurance law, instituted in 1966-1967, mainly under the influence of Doyen Rodière, ushered in a major change in the ruling of the matter and incorporated a system closer to that applying to terrestrial insurance. We shall study this reform at a later stage.

B. Belgium

The strict rule of “*réticence*” as set forth by Art. 348 of the French Code of Commerce in its initial version of 1807, has been kept by the Belgian law on insurance, also applicable to marine insurance.

Title X of the Book I of the Belgian Code of Commerce reflects the provisions of the law dated 11th June 1874 on “insurance in general”, whilst Title VI of the Book II of the same Code contains the provisions of the law dated 21st August 1879 on marine insurance.

The particularity of Art. 9 of the Title X of the Belgian Code of Commerce on “*réticence*”, compared with the wording of the French rule, is to specify that the withholding of information or the misrepresentation of the insured do not need to be accompanied by bad faith to invalidate the contract.

Hence, where the Belgian provision adds the terms: “... even in good faith” to the concept of “*réticence*”, this may lead to some confusion, since the word generally is defined as an intentional non-disclosure of material facts. In the same manner, the words “*fausse déclaration*” (misrepresentation) could also imply an intentional alteration of the truth, either by omission or as a result of a lie.

The law of 1874 has been deeply modified by the Law of the 25th June 1992, which does not strictly concern marine insurance, a field in which the old rule of “*réticence*” remains accordingly unchanged at today’s date.

Its spirit is also maintained, by virtue of Article 31 in case of an aggravation of the risk in the course of the contract. It can be noticed, however, that the policy cannot be annulled if, after having knowledge of the aggravation, the insurer has not resiliated the contract forthwith or within a certain reasonable period.

C. Germany

Until a not too distant past, marine insurance law in Germany was ruled by the provisions of Article 806,1 of the HGB (Handelsgesetzbuch — 1897) specifically applicable to marine insurance, and modified by a law of the 30th May 1908 aiming to reach a harmonization between marine insurance and terrestrial insurance.

According to its provisions, the contracting party had the duty to disclose to the insurer, at the time of entering the contract, all circumstances in his knowledge which, inasmuch as they are of importance to appreciate the risk, may influence the willingness of the underwriter to make the contract, or to agree with it on the same conditions.

For some authors, this duty was based on the fact that, under German law, the insurance contract was “*uberrimae fidei*”, but some others objected, and the principle has remained in question.

According to Art. 808 and 809 of the HGB, the underwriter was entitled to annul the contract whenever any important circumstance known by the insured had been withheld by him, whether acting in good faith or not.

However the provisions of the HGB on marine insurance are dead law and for decades have not been applied in practice.

Practice nowadays is fully governed by the German Standard Insurance Conditions, the “Allgemeine Deutsche See-Versicherungs Bedingungen” (ADS).

These conditions contain in Section 13 a general provision on “utmost

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good faith”, which puts the old academic discussion to an end : for the Germans, “*uberrima fides*” henceforth prevails in marine insurance.

However the application of the principle seems to be smoother than in other legislations.

This is reflected in the rule of Article 20, 2 of the ADS, by virtue of which non-disclosure or misrepresentation, due to the lack of knowledge of a material fact by the insured, in the absence of any negligence on his part, does not entail the annulment of the contract : the insurer is then only entitled to a supplementary premium in proportion with the aggravation of the risk.

D. Greece

Marine insurance in Greece is governed by Articles 189 to 225 of the Greek Commercial Code (General Insurance Law) and Articles 257 to 288 (Marine Insurance) of the Greek Code of Private Maritime Law (Law 3716/1958).

According to Article 202, any non-disclosure or misrepresentation of the facts known to the insured, entitles the annulment of the insurance if it can be considered that the insurer would not have entered the contract, or not have made it on the same conditions, if he had known of the actual situation.

It is also stressed in the same provisions that the contract is void even if the non-disclosure or the misrepresentation concern facts without any connection with the damage.

The underwriter is entitled to retain premiums if the bad faith of the insured is proved.

E. Netherlands

Marine insurance in the Netherlands is governed by Title 9 of Book I and Book II of the Commercial Code, as well as the general provisions of the Civil Code.

The rule is quite similar to that of the French Article 348, in its initial version of 1807.

It is expressed in Article 251 of the Commercial Code, of which the particularity is to require no causation between the non-disclosure and the actual damage. This provisions reads:

“Renders the contract null and void any false or untrue representation or any non-disclosure — even though occurring in good faith — of circumstances known to the insured and of such a nature that the insurer, had he known of the true state of matters, would not have concluded the contract or not on the same conditions.”

F. Spain. the old regime of the Code of Commerce

In the past, and until 1980, mercantile insurance contracts were regulated by Articles 380 to 438 of the Code of Commerce.

Traditionally, the principle of "good faith" has been of a crucial importance in the regulation of the insurance contract. Some of the Spanish scholars have even considered it as a "uberrimae fidei" contract, due to the fact that the insurer who has no control over the insured object, should be protected against bad faith or negligence on the part of the insured. That explains the original wording of Article 381 of the Code of Commerce, under which, even in good faith, any non-disclosure or any misrepresentation affecting the judgement of the risk by the insurer, entitled the annulment of the contract.

However a reform took place in 1980, that we shall study later on.

G. Argentina

The matter is governed by Article 5 of the no. 17.418 Act, dated 6 September 1967, which reflects the provision of Article 498 of the Argentinian Code of Commerce (1868-1889) no longer in force.

A particularity in that legislation is the reference to experts' opinion to determine the conditions in which the contract was made.

The main principle to retain is that, for the Article 5 of the 17.418 Act, as formerly for the Article 498 of the Commercial Code, a duty of good faith bears on the insured ("uberrima bona fides"), and the rule of "réticence" is of strict application. Accordingly, any withholding or false representation of circumstances known by the insured, even in good faith, which, in experts' opinion, would have prevented the conclusion of the contract, or its conditions, had the insurer been aware of the actual risk, renders the insurance contract null and void.

These were some examples, in a selection of countries which necessarily is incomplete. The idea pursued was to show for each of them how their system was, or is, quite similar to those of England, Australia and the United States.

II. Towards a protection of good faith

Other legislations have chosen to deviate from the tradition of "utmost good faith", mainly with the aim of separating good faith, negligence and fraud.

A. Denmark

Marine insurance is dealt with in Danish law by Article 59 to 76 of the Law n° 129 of the 15th April 1930, and implemented in the relations between the Danish Association of Marine Underwriters, the Danish Association of Shipowners, and the Danish Union of Merchants by an "Agreement" dated the 2nd April 1934.

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In respect of the duty of disclosure by the insured, it results from the provisions of Articles 4 to 10 of the law, and Articles 21 to 30 of the Agreement, that the insured must, in concluding the contract, provide the underwriter with full and accurate information of all circumstances known to him, able to influence on the insurer's opinion of the risk.

The breach of this obligation leads to several sanctions, depending on its particularities:

a) in case of non-disclosure

The non-disclosure is intentional: then the underwriter is released from any obligation (Art. 4 of the law; Art. 22 of the Convention);

the non-disclosure is due to heavy negligence: two situations may be envisaged:

either it is likely that the insurer would not have made the contract had he known the actual risk: then he is released from any obligation (Art. 7 of the law);

or, it is likely that, had he been better informed, the insurer would have made the contract but under other conditions: then he is still bound by the insurance, but only provided the non-disclosure had no influence on the occurrence or the extent of the damage itself (Art. 7 of the law).

b) in case of misrepresentation

- in good faith: the false information being due to the proven lack of knowledge of the insured, the contract remains valid. However, the insurer has the right to resiliate, within one week's notice (Article 5 of the law; Article 23 of the Agreement).

- with fraud: the false representation of a material circumstance releases the insurer from any obligation (Article 4 of the Law; Article 22 of the Agreement).

In all cases, and unless the insured has acted in bad faith, the insurer who wishes to be released from his obligations, must notify with utmost despatch his intention to the insured (Article 26 of the Agreement).

B. Japan

The duty to disclose under Japanese law is ruled by Article 815 of Chapter VI (Maritime Commerce) of the Commercial Code, which reads:

“A contract of marine insurance has for its object indemnification against loss which may arise from a contingency connected with navigation.

Except as otherwise provided in this Chapter, the provisions of Book III, Chapter X, Section I, Sub-Section I shall apply to contracts of marine insurance.”

It is worth mentioning Articles 644 and 645 of the latter provisions, since they contain some original rules on our subject.

Article 644:

“If, at the time when the contract of insurance was effected, the person effecting the insurance, through bad faith or gross negligence, failed

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to disclose material facts or made a false statement in regard to material facts, the insurer may rescind the contract; but this shall not apply in cases where the insurer was aware of such facts or was unaware of them through negligence.

The right of rescission mentioned in the preceding paragraph shall be extinguished if it is not exercised within one month of the time when the insurer became aware of the grounds for rescission ; the same shall apply when five years have elapsed from the time when the contract was effected.”

Article 645:

“In case the contract has been rescinded in pursuance of the provisions of the preceding Article, such rescission shall take effect only for the future.

Even if the insurer has rescinded the contract after the occurrence of the risk, he is not bound to indemnify the loss, and if he has paid the amount insured, he may demand its return, unless the insured proves that the misrepresentation or the non-disclosure had no causation on the insured damage.”

C. Italy

Marine insurance in Italy is governed by the Civil Code which contains some interesting rules on non-disclosure and misrepresentation.

a) At the commencement of the contract

Separate treatments are reserved for misrepresentation or failure to disclose made under bad faith or good faith:

- with fraud or gross negligence

Art. 1892.

“If the contracting party, fraudulently or through gross negligence, misrepresents or fails to disclose circumstances which, if known to the insurer, would have caused him to withhold his consent to the contract, or to withhold his consent on the same conditions, the insurer can annul the contract.

The insurer forfeits his right to attack the contract if, within three months from the day on which he had knowledge of the falsity of the misrepresentation or the failure to disclose, he fails to notify the contracting party of his intention to attack the contract.

The insurer is entitled to the premiums covering the period of insurance running at the time when he petitioned for annulment of the contract, and in all cases to the premiums agreed upon for the first year. If the accident occurs before the expiration of the period indicated in the preceding paragraph, the insurer is not bound to pay the amount of the insurance.

If the insurance concerns more than one person or thing, the contract is valid with respect to such persons or such things as are not affected by the misrepresentation or the failure to disclose.”

Part II - The Work of the CMI

- without fraud or gross negligence

Art. 1893.

“If the contracting party has acted without fraud or gross negligence, misrepresentation or failure to disclose are not grounds for annulment of the contract, but the insurer can withdraw from the contract by means of a declaration to be made to the insured within three months from the day of which the insurer had knowledge of the representation or of the failure to disclose.

If the accident occurs before the insurer has knowledge of the falsity of the representation or of the failure to disclose, or before he has notified the insured of his intention to withdraw from the contract, the amount due by him is reduced in proportion to the difference between the premium agreed upon and the premium which would have applied if the true situation had been known.”

b) In the currency of the contract

Articles 1897 and 1898 of the Italian Civil Code regulate the obligations of the parties in case of a reduction and of an increase in the risk covered by insurance.

Such articles provide as follows:

Art. 1897: Reduction in risk.

“If the contracting party notifies the insurer of changes causing such reduction in risk as would have entailed the stipulation of a lower premium if known at the time of making the contract, the insurer can demand only such lower premium. The lower rate is effective from the date of the maturity of the premium or instalment next following receipt of the above mentioned notice, but the insurer can withdraw from the contract within two months from the day on which notice was given.

The declaration of withdrawal from the contract is effective after one month.”

Art. 1898: Increase in risk.

“A contracting party has the obligation to give immediate notice to the insurer of changes which increase the risk in such a way as would have caused the insurer not to agree to the insurance contract, or to agree only for a higher premium, if the new situation had existed and had been known to him at the time of making the contract.

The insurer can withdraw from the contract by giving written notice thereof to the insured within one month from the day on which he has received notice or has otherwise had notice of the increased risk. The withdrawal of the insurer is effective immediately if the increased risk would have caused the insurer not to agree to the insurance contract ; such withdrawal is effective after fifteen days if the increased risk would have entailed a request for a higher premium for the insurance.

The insurer is entitled to the premiums covering the insurance period running at the time when notice of withdrawal is given.

If the accident occurs before the expiration of the time limit for the notice of withdrawal and for the effectiveness thereof, the insurer is

free from liability when the increased risk would have caused him not to agree to the insurance if the new situation had existed at the time of making the contract; otherwise, the amount due is reduced, taking into account the relationship between the premium agreed upon in the contract and the premium which would have been stipulated if the higher risk had existed when the contract was entered into."

D. The new Spanish system

As a consequence of the enactment of the 1980 Insurance Act, Article 381 of the Commercial Code referred to at an earlier stage is no longer applicable. The applicable provisions dealing with good faith and specifically applicable to marine insurance are contained both in the Code of Commerce, Article 731 to 804 relating to "marine insurance" and in the 1980 Law (General Provisions) as subsidiarily applicable.

The new Spanish legislation has neatly separated the treatment of good faith, negligence and fraud or gross negligence.

Regarding the rules on non-disclosure and misrepresentation by the insured affecting the valuation of the risk, Article 752 of the Code of Commerce dealing with marine insurance provides that:

"The subscription of the policy creates a legal presumption of correct valuation of the risk being so accepted by the insurers, unless fraud or bad faith is committed by the insured."

In the case of an exaggeration in the valuation of the risk, the following options are opened:

In the case of misrepresentation by the insured due to error, not to bad faith, of the insured, the insured value will be reduced to the real value as fixed by the parties by common accord or otherwise by expert appraisal. The insurer must reimburse the excess premiums paid, although retaining half of this excess.

In the case of false declaration due to fraud by the insured the contract shall be without effect and the insurer will retain past premiums; without prejudice of any other criminal action which could be brought by the insurer. The same rule applies to false valuation of the insured value made intentionally.

It may also be observed that the 1980 Law which concerns general insurance law also provides that the holder of the policy has the obligation, before the contract is concluded, to notify the insurer of all the circumstances known by him affecting the judgement of the risk in accordance with the questionnaire submitted to him by the insurer for this purpose. However, he will be exempted from such an obligation if no questionnaire is submitted to him by the insurer or in the case of circumstances which could have an influence on the valuation of the risk but are not included in it.

This last paragraph was incorporated as a consequence of the implementation of the Law 21/1990 which adapted Spanish Law to the EEC Directive 357/1988 concerning the freedom of services in insurance and updates private insurance legislation (I may add, at this stage, that a simi-

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lar adaptation took place in France, with the Law 1089-1114 of 31 December 1989 applicable as such to general insurance contracts, not to marine insurance policies. It also compels the insured to truly fulfill the questionnaire, if submitted by the underwriter).

The 1980 Law further states that the insurer may rescind the contract by written notification to the holder of the policy within one month from the time the insurer had knowledge of the misrepresentation made by the holder of the policy. The insurer will be entitled to the premiums relating to the current period at the time of the notification, unless fraud or gross negligence has been committed by him.

If the loss occurs prior to such notification, the indemnity shall be reduced in proportion to the difference between the agreed premium and the premium which would have been applicable if the insurer would have known the real value of the risk. In the case of fraud or gross negligence committed by the holder of the policy, the insurer is not at all bound to pay the indemnity.

All these rules, much more flexible than the old provision contained in Article 381 of the Code of Commerce (which stated that any misrepresentation by the insured, even in good faith, annuls the contract) are more favourable to the party's interest.

To sum up, it can be said that according to Spanish law, good faith should prevail in the execution of any contract as a general principle of law. Nevertheless, that system makes a difference in the treatment of good faith and that of fraud or gross negligence. Only in the latter case may the contract be annulled.

E. The present French system

As from the outset, the original rule contained in Article 348 of the Code of Commerce (1807) was that of "réticence", according to which any misrepresentation or non-disclosure by the insured rendered the insurance contract null and void (see above, Part I).

After 1930, and the implementation of the Law of the 13th July 1930 on terrestrial insurance, the rules became different in terrestrial and marine insurance, the former being more protective of the insured's interest, mainly in the aim of safeguarding the victims of road accidents in their direct action against the underwriters. Then appeared the system of proportionality.

Unavoidably, and although marine insurance is not concerned by the same legitimate care for the victims nor the trend of consumerism, the novelty of terrestrial insurance developed a strong influence on the legislator when he carried out the reform of maritime law in 1967.

With the Law of the 3rd July 1967 and its Article 6 (integrated in Art. 172.2 of the Code des Assurances), a separate treatment is henceforth reserved for the insured of good faith and those of bad faith.

*Marine Insurance - Jean-Serge Rohart*1) Disclosure at the commencement of the contract

- a. The rule: it is contained in Art. 172.19.3 of the "Code des Assurances". The insured must "exactly disclose when the contract is placed, all the circumstances in his knowledge which may be of influence on the judgement of the risk by the insurer".

Art. 172.2 specifies that the facts to be disclosed are those known to the insured but not to the insurer, and must be "significant" (in French "sensiblement") in the opinion of the risk by the insurer.

The duty of disclosure is therefore limited to those facts which:

- are unknown or should be known to the insurer,
- are significant for the opinion of the risk by the insurer.

- b. The sanctions: Failure to disclose and misrepresentation (the term "*réticence*" is no longer used in the new provisions, and has been replaced by "*omission*") entitle the insurer to annul the contract inasmuch as they have significantly reduced his opinion of the risk, and even though it had no causation with the insured damage.

A specific consideration, case by case, of the insurer's actual opinion will have to be made by the Judge.

The penalties may be of two sorts: annulment or proportionality, depending on the evidence given of good faith or bad faith on the part of the insured.

1. if the insured does not succeed in evidencing his good faith, the contract is annulled, but the insurer must return the premium paid.
2. if the insurer brings evidence that the insured behaved in bad faith, the contract will be annulled, and the insurer entitled to retain the premium.
3. if good faith is evidenced by the insured, the contract remains valid and in case of damage the risk is covered. However, the insured will only receive an indemnity of which the amount will be calculated in proportion of the premium actually paid compared with the premium which would have been owed. That is the rule of proportionality.

For instance, we have an insured value of 1.000 totally lost. The insured had paid a premium of 20. The insurer proves that, had he known the actual risk, he would have billed a premium of 30. In such case the indemnity will be reduced as follows:

$$\frac{\times}{1.000} \quad \frac{20}{30} \quad \text{or } 666 \text{ instead of } 1.000$$

A practical difficulty met with the rule of proportionality itself arises from the way to adjust the accurate premium, insofar as no official rating scheme exists on the marine insurance market, unlike in the terrestrial insurance.

The French Marine Underwriters have tried to escape from the rule of proportionality by including in some standard policies (hull insurance policy 1.12.1983, Art. 8,1; cargo insurance policy 30 June 1983, Art. 14,1) a provision according to which any non-disclosure prior to the making of the contract shall render the contract null and void. But, being contrary to the mandatory provisions of Art. 172.2 of the Code des Assurances, that provision is not binding on the insured...

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Another remedy consists in including in standard policies arbitration clauses, so that it belongs to the Arbitrators to determine whether the insurer might have entered the contract if the actual risk had been disclosed or to decide the extent to which indemnity may be proportionally reduced (Art. 15 insurance on owner's liability ; Art. 23 insurance on carrier's liability).

4. It must be kept in mind that even if the insured brings the evidence of his good faith, the insurer may still prove that had he known of the actual risk, he would not have insured it, and the contract may then be annulled. However this regulation creates a practical problem, arising from the obligation bearing on the insurer to bring a negative proof — “*Probatio diabolica*” or “*preuve négative, preuve diabolique*”, as we say in French.

2) Declarations during the currency of the contract

According to Art. 172.3 of the Code des Assurances, the insured must, during the currency of the policy, declare any alteration of the circumstances or of the thing insured, resulting in a significant aggravation of the risk. Such declaration must be made not later than three working days after the insured has known of the alteration. Failing to observe that duty, the insured faces the same sanctions as above.

To sum up, the French system of 1967, although not based on “*uberima fides*” nor the doctrine of “*utmost good faith*” contains four rules tending to punish bad faith.

1. If the non disclosure or the misrepresentation arise from the insured's fraud, the contract is annulled, and the underwriter is entitled to retain the premium.
2. The contract is also annulled if the insured does not succeed in proving his good faith. The underwriter will however be obliged to return the premium.
3. Even if proof of the insured's good faith is brought, the insurer may annul the contract if he proves that he would not have contracted had he known the actual risk.
4. Once good faith is evidenced by the insured, the contract remains valid, but the indemnity is proportionally adjusted, provided the insurer does not evidence that he would not have contracted had he known of the risk.

III. Conclusions

In conclusion, several particularities may be retained from the several systems contemplated:

- laws having inherited their rules from the Dutch and Spanish tradition of the XVIIth century initially treated most severely non-disclosure and misrepresentation, as was the case in the former Art. 348 of the French Code of Commerce.
- the continental systems have henceforth evolved towards a distinction in the insured's failure, depending on whether or not he is acting in

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good faith. The right for the insurer to annul the contract may then be subject to the evidence of bad faith, a fraud, or a gross negligence. A right to resiliate before any damage occurs also exists, but limited to a certain period from the time the insurer has knowledge of the actual risk. A further major characteristic of the recent continental legislations is, as in Italy, in France since 1967, in Spain since 1980 for instance, the rule of proportionality, though criticized for its practical obstacles or limits.

This evolution, historical and geographical, of the civil law countries in their marine insurance legislation may lead to a very simple conclusion: one cannot define them as fundamentally different from the common law systems previously commented.

Indeed, the concept of "utmost good faith" is not by itself the cornerstone of most of the continental regulations, but it necessarily contributes, and will do so even more in the future, to the true determination of the insured's behaviour, leading to quite subtle treatments depending on the degree of his innocent lack of knowledge, or on his wilful intention to betray.

Turning to the insurer, we can observe that although the term of "prudent insurer" is never used by any of the several legislations studied, most of them however reserve a particular attention to the insurer's knowledge of, or to his supposed ability to know the actual risk to insure.

In other terms, it appears that for all legal systems, in common or civil law, good faith on the one hand, and professionalism on the other, should be values of universal bearing, and if not, there remains work for lawyers!

PART III

**Status of ratifications to
Maritime Conventions**

**Etat des ratifications
aux Conventions de Droit Maritime**

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 réserves formulées par les Etats contractans lors du dépôt des instruments de ratification ou d'adhésions sont publiées dans l'Annuaire 1992 après l'état des ratifications de chaque convention.

(3) - Certaines Conventions ont en certains Pays été incorporées dans la loi nationale sans que ces Pays aient formellement ratifié ou adhéré à la dite Convention. Ces Pays ne sont pas repris dans les listes. Pour toute certitude une vérification locale est toujours conseillée.

(4) - A la suite de l'unification de l'Allemagne les conventions, qui avaient été ratifiées par la République Fédérale d'Allemagne avant l'unification, sont également en vigueur dans les nouveaux états fédérés qui constituaient naguère la République Démocratique Allemande (Brandebourg, Mecklembourg Vorpommern, Saxe, Saxe Anhalt et Thuringe): voir l'article 11 du "Vertrag zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands-Einigungsvertrag". Les conventions uniquement ratifiées par la République Démocratique Allemande ne sont plus en vigueur à la suite de la dissolution de la République Démocratique Allemande.

(5) - Le 30 juillet 1992 a été reçue au Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement de Belgique une note verbale par laquelle la République de Croatie notifie qu'elle se considère liée par les Conventions suivantes et qu'elle succède à partir de la date de l'indépendance de la Croatie, c'est-à-dire au 8 octobre 1991, aux droits et aux obligations souscrits antérieurement par la République socialiste fédérative de Yougoslavie.

1. Abordage (1910)
2. Assistance et sauvetage (1910)
3. Assistance et sauvetage - Protocole (1967)
4. Connaissance (1924)
5. Compétence civile (1952)
6. Compétence pénale (1952)
7. Saisie conservatoire (1952).

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) - Reservations made by Contracting States at the time of the deposit of the instruments of ratification or accession and other relevant information are published in the Yearbook 1992 after the status of ratification of each convention.

(3) - Some Countries may have enacted in their domestic law some Conventions without having formally ratified or acceded to such Convention. Those Countries are not listed herein. For certainty local verification is always recommended.

(4) - As a consequence of the German unification the Conventions ratified by the Federal Republic of Germany prior to the unification are in force also in the new Federal States formerly constituting the German Democratic Republic (Brandenburg, Mecklenburg-Vorpommern, Sachsen, Sachsen-Anhalt and Thüringen): see Art. 11 of the "Vertrag zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands-Einigungsvertrag". The Conventions ratified only by the former German Democratic Republic are not effective anymore, owing to the dissolution of the German Democratic Republic.

(5) On 30th July 1992 a note verbale has been received by the Ministry of Foreign Affairs, of Foreign Trade and of Co-Operation and Development of Belgium whereby the Republic of Croatia notifies that it considers itself bound by the following Conventions and that it succeeds as of the date of independence of Croatia, namely of 8th October 1991, to the rights and obligations previously pertaining to the Socialist Federal Republic of Yugoslavia:

1. Collision (1910)
2. Assistance and Salvage (1910)
3. Assistance and Salvage - Protocol (1967)
4. Bills of Lading (1924)
5. Civil Jurisdiction (1952)
6. Penal Jurisdiction (1952)
7. Arrest of Ships (1952)

*Abordage 1910**Collision 1910*

**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, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Angola	(a)	20.VII.1914
Antigua and Barbuda	(a)	1.II.1913
Argentina	(a)	28.II.1922
Australia	(a)	9.IX.1930
Norfolk Island	(a)	1.II.1913
Austria	(r)	1.II.1913
Barbados	(a)	1.II.1913
Belgium	(r)	1.II.1913
Brazil	(r)	31.XII.1913
Canada	(a)	25.IX.1914
Cape Verde	(a)	20.VII.1914
China	(a)	28.VIII.1994
Cyprus	(a)	1.II.1913
Croatia	(a)	8.X.1991
Denmark	(r)	18.VI.1913
Dominican Republic	(a)	1.II.1913
Egypt	(a)	29.XI.1943
Estonia	(a)	15.V.1929
Fiji	(a)	1.II.1913
Finland	(a)	17.VII.1923
France	(r)	1.II.1913
Gambia	(a)	1.II.1913
Germany	(r)	1.II.1913
Ghana	(a)	1.II.1913
Goa	(a)	20.VII.1914
Greece	(r)	29.IX.1913
Grenada	(a)	1.II.1913
Guinea-Bissau	(a)	20.VII.1914
Guyana	(a)	1.II.1913
Haiti	(a)	18.VIII.1951
Hungary	(r)	1.II.1913
India	(a)	1.II.1913
Iran	(a)	26.IV.1966
Ireland	(r)	1.II.1913
Italy	(r)	2.VI.1913
Jamaica	(a)	1.II.1913
Japan	(r)	12.I.1914
Kenya	(a)	1.II.1913

*Abordage 1910**Collision 1910*

Kiribati	(a)	1.II.1913
Latvia	(a)	2.VIII.1932
Luxembourg	(a)	22.IV.1991
Libyan Arab Jamahiriya	(a)	9.XI.1934
Macao	(a)	20.VII.1914
Malgache Republic	(r)	1.II.1913
Malaysia	(a)	1.II.1913
Malta	(a)	1.II.1913
Mauritius	(a)	1.II.1913
Mexico	(r)	1.II.1913
Mozambique	(a)	20.VII.1914
Netherlands	(r)	1.II.1913
Newfoundland	(a)	11.III.1914
New Zealand	(a)	19.V.1913
Nicaragua	(r)	18.VII.1913
Nigeria	(a)	1.II.1913
Norway	(r)	12.XI.1913
Papua New Guinea	(a)	1.II.1913
Paraguay	(a)	22.XI.1967
Poland	(a)	2.VI.1922
Portugal	(r)	25.XII.1913
Romania	(r)	1.II.1913
Russian Federation	(r)	10.VII.1936
Saint Kitts and Nevis	(a)	1.II.1913
Saint Lucia	(a)	3.III.1913
Saint Vincent and the Grenadines	(a)	1.II.1913
Solomon Islands	(a)	1.II.1913
Sao Tome and Principe	(a)	20.VII.1914
Seychelles	(a)	1.II.1913
Sierra Leone	(a)	1.II.1913
Singapore	(a)	1.II.1913
Slovenia	(a)	16.XI.1993
Somalia	(a)	1.II.1913
Spain	(a)	17.XI.1923
Sri-Lanka	(a)	1.II.1913
Sweden	(r)	12.XI.1913
Switzerland	(a)	28.V.1954
Timor	(a)	20.VII.1914
Tonga	(a)	13.VI.1978
Trinidad and Tobago	(a)	1.II.1913
Turkey	(a)	4.VII.1913
Tuvalu	(a)	1.II.1913

*Abordage 1910**Collision 1910*

United Kingdom	(r)	1.II.1913
Jersey, Guernsey, Isle of Man, Anguilla, Bermuda, Gibraltar, Hong Kong, Falkland Islands and Dependencies, Cayman Islands, British Virgin Islands, Montserrat, Caicos & Turks Islands, Saint Helena, Wei-Hai-Wei	(a)	1.II.1913
Uruguay	(a)	21.VII.1915
Zaire	(a)	17.VII.1967

* 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*

**Convention internationale
pour l'unification de certaines
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

**International convention
for the unification of
certain rules of law
relating to**

**Assistance and salvage at
sea
and protocol of signature**

Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Algeria	(a)	13.IV.1964
Angola	(a)	20.VII.1914
Antigua and Barbuda	(a)	1.II.1913
Argentina	(a)	28.II.1922
Australia	(a)	9.IX.1930
Norfolk Island	(a)	1.II.1913
Austria	(r)	1.II.1913
Bahamas	(a)	1.II.1913
Barbados	(a)	1.II.1913
Belgium	(r)	1.II.1913
Belize	(a)	1.II.1913
Brazil	(r)	31.XII.1913
Canada	(a)	25.IX.1914
<i>(denunciation 22.XI.1994)</i>		
Cape Verde	(a)	20.VII.1914
Cyprus	(a)	1.II.1913
Croatia	(a)	8.X.1991
Denmark	(r)	18.VI.1913
Dominican Republic	(a)	23.VII.1958
Egypt	(a)	19.XI.1943
Fiji	(a)	1.II.1913
Finland	(a)	17.VII.1923
France	(r)	1.II.1913
Gambia	(a)	1.II.1913
Germany	(r)	1.II.1913
Ghana	(a)	1.II.1913
Goa	(a)	20.VII.1914
Greece	(r)	15.X.1913
Grenada	(a)	1.II.1913
Guinea-Bissau	(a)	20.VII.1914
Guyana	(a)	1.II.1913
Haiti	(a)	18.VIII.1951
Hungary	(r)	1.II.1913
India	(a)	1.II.1913
Iran	(a)	26.IV.1966

*Assistance et sauvetage 1910**Assistance and salvage 1910*

Ireland	(r)	1.II.1913
Italy	(r)	2.VI.1913
Jamaica	(a)	1.II.1913
Japan	(r)	12.I.1914
Kenya	(a)	1.II.1913
Kiribati	(a)	1.II.1913
Latvia	(a)	2.VIII.1932
Luxembourg	(a)	22.IV.1991
Macao	(a)	20.VII.1914
Malaysia	(a)	1.II.1913
Malta	(a)	1.II.1913
Malgache Republic	(r)	1.II.1913
Mauritius	(a)	1.II.1913
Mexico	(r)	1.II.1913
Mozambique	(a)	20.VII.1914
Netherlands	(r)	1.II.1913
Newfoundland	(a)	12.XI.1913
New Zealand	(a)	19.V.1913
Nigeria	(a)	1.II.1913
Norway	(r)	12.XI.1913
Oman	(a)	21.VIII.1975
Papua - New Guinea	(a)	1.II.1913
Paraguay	(a)	22.XI.1967
Poland	(a)	15.X.1921
Portugal	(r)	25.VII.1913
Romania	(r)	1.II.1913
Russian Federation	(a)	10.VII.1936
Saint Kitts and Nevis	(a)	1.II.1913
Saint Lucia	(a)	3.III.1913
Saint Vincent and the Grenadines	(a)	1.II.1913
Solomon Islands	(a)	1.II.1913
Sao Tomé and Principe	(a)	20.VII.1914
Seychelles	(a)	1.II.1913
Sierra Leone	(a)	1.II.1913
Singapore	(a)	1.II.1913
Slovenia	(a)	13.X.1993
Somalia	(a)	1.II.1913
Spain	(a)	17.XI.1923
Sri Lanka	(a)	1.II.1913
Sweden	(r)	12.XI.1913
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974
Timor	(a)	20.VII.1914
Tonga	(a)	13.VI.1978
Trinidad and Tobago	(a)	1.II.1913
Turkey	(a)	4.VII.1955
Tuvalu	(a)	1.II.1913

*Assistance et sauvetage 1910**Assistance and salvage 1910*

United Kingdom (1)	(r)	1.II.1913
Anguilla, Bermuda, Gibraltar, Hong Kong, Falkland Islands and Dependencies, British Virgin Islands, Montserrat, Turks & Caicos Islands, Saint Helena	(a)	1.II.1913
United States of America	(r)	1.II.1913
Uruguay	(a)	21.VII.1915
Zaire	(a)	17.VII.1967
<i>(denunciation 12.XII.1994 effective also for Falkland Islands, Montserrat, South Georgia and South Sandwich Islands)</i>		

(1) Including Jersey, Guernsey and Isle of Man

Protocole portant modification de la convention internationale pour l'unification de certaines règles en matière d'Assistance et de sauvetage maritimes
Signée à 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 23rd September, 1910

Brussels, 27th May, 1967
 Entered into force: 15 August 1977

Austria	(r)	4.IV.1974
Belgium	(r)	11.IV.1973
Brazil	(r)	8.XI.1982
Croatia	(r)	8.X.1991
Egypt	(r)	15.VII.1977
Jersey, Guernsey & Isle of Man	(a)	22.VI.1977
Papua New Guinea	(a)	14.X.1980
Slovenia	(a)	13.X.1993
Syrian Arab Republic	(a)	1.VIII.1974
United Kingdom	(r)	9.IX.1974

*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**

**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**

Bruxelles, 25 août 1924
Entrée en vigueur: 2 juin 1931

Brussels, 25th August, 1924
Entered into force: 2 June, 1931

(Translation)

Belgium	(r)	2.VI.1930
Brazil	(r)	28.IV.1931
Denmark	(r)	2.VI.1930
<i>(denunciation - 30.VI.1983)</i>		
Dominican Republic	(a)	23.VII.1958
Finland	(a)	12.VII.1934
<i>(denunciation - 30.VI.1983)</i>		
France	(r)	23.VIII.1935
<i>(denunciation - 26.X.1976)</i>		
Hungary	(r)	2.VI.1930
Malgache Republic	(r)	12.VIII.1935
Monaco	(r)	15.V.1931
<i>(denunciation - 24.I.1977)</i>		
Norway	(r)	10.X.1933
<i>(denunciation - 30.VI.1963)</i>		
Poland	(r)	26.X.1936
Portugal	(r)	2.VI.1930
Spain	(r)	2.VI.1930
Sweden	(r)	1.VII.1938
<i>(denunciation - 30.VI.1963)</i>		
Turkey	(a)	4.VII.1955

*Règles de La Haye 1924**Hague Rules 1924*

**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 August 1924
Entered into force: 2 June 1931

(Translation)

Algeria	(a)	13.IV.1964
Angola	(a)	2.II.1952
Antigua and Barbuda	(a)	2.XII.1930
Argentina	(a)	19.IV.1961
Australia	(a)	4.VII.1955
Norfolk	(a)	4.VII.1955
Bahamas	(a)	2.XII.1930
Barbados	(a)	2.XII.1930
Belgium	(r)	2.VI.1930
Belize	(a)	2.XI.1930
Bolivia	(a)	28.V.1982
Cameroon	(a)	2.XII.1930
Cape Verde	(a)	2.II.1952
Cyprus	(a)	2.XII.1930
Croatia	(r)	8.X.1991
Cuba	(a)	25.VII.1977
Denmark	(a)	1.VII.1938
<i>(denunciation - 1.III.1984)</i>		
Dominican Republic	(a)	2.XII.1930
Ecuador	(a)	23.III.1977
Egypt (1)	(a)	29.XI.1943

(1) On 17 February 1993 Egypt notified to the Government of Belgium that it had become a party to the U.N. Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules) but that it deferred the denunciation of the 1924 Brussels Convention, as amended, for a period of five years. If, as provided in Article 31 paragraph 4 of the Hamburg Rules, the five years period commences to run on the date of entry into force of the Hamburg Rules (1 November 1992), the denunciation made on 1 November 1997 will take effect on 1 November 1998).

*Règles de La Haye 1924**Hague Rules 1924*

Fiji	(a)	2.XII.1930
Finland	(a)	1.VII.1939
<i>(denunciation — 1.III.1984)</i>		
France	(r)	4.I.1937
Gambia	(a)	2.XII.1930
Germany	(r)	1.VII.1939
Ghana	(a)	2.XII.1930
Goa	(a)	2.II.1952
Greece	(a)	23.III.1993
Grenada	(a)	2.XII.1930
Guyana	(a)	2.XII.1930
Guinea-Bissau	(a)	2.II.1952
Hungary	(r)	2.VI.1930
Iran	(a)	26.IV.1966
Ireland	(a)	30.I.1962
Israel	(a)	5.IX.1959
Italy	(r)	7.X.1938
<i>(denunciation — 22.XI.1984)</i>		
Ivory Coast	(a)	15.XII.1961
Jamaica	(a)	2.XII.1930
Japan	(r)	1.VII.1957
<i>(denunciation — 1.VI.1992)</i>		
Kenya	(a)	2.XII.1930
Kiribati	(a)	2.XII.1930
Kuwait	(a)	25.VII.1969
Lebanon	(a)	19.VII.1975
Malaysia	(a)	2.XII.1930
Malgache Republic	(a)	13.VII.1965
Mauritius	(a)	24.VIII.1970
Monaco	(a)	15.V.1931
Mozambique	(a)	2.II.1952
Nauru	(a)	4.VII.1955
Netherlands	(a)	18.VIII.1956
<i>(denunciation — 26.IV.1982)</i>		
Nigeria	(a)	2.XII.1930
Norway	(a)	1.VII.1938
<i>(denunciation — 1.III.1984)</i>		
Papua New Guinea	(a)	4.VII.1955
Paraguay	(a)	22.XI.1967
Peru	(a)	29.X.1964
Poland	(r)	4.VIII.1937
Portugal	(a)	24.XII.1931
Macao	(a)	2.II.1952
Romania	(r)	4.VIII.1937
Sao Tomé and Príncipe	(a)	2.II.1952
Sarawak	(a)	3.XI.1931
Senegal	(a)	14.II.1978
Seychelles	(a)	2.XII.1930
Sierra-Leone	(a)	2.XII.1930

*Règles de la Haye 1924**Hague Rules 1924*

Singapore	(a)	2.XII.1930
Solomon Islands	(a)	2.XII.1930
Somalia	(a)	2.XII.1930
Spain	(r)	2.VI.1930
Sri-Lanka	(a)	2.XII.1930
St. Kitts and Nevis	(a)	2.XII.1930
St. Lucia	(a)	2.XII.1930
St. Vincent and the Grenadines	(a)	2.XII.1930
Sweden	(a)	1.VII.1938
<i>(denunciation — 1.III.1984)</i>		
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974
Tanzania (United Republic of)	(a)	3.XII.1962
Timor	(a)	2.II.1952
Tonga	(a)	2.XII.1930
Trinidad and Tobago	(a)	2.XII.1930
Turkey	(a)	4.VII.1955
Tuvalu	(a)	2.XII.1930
United Kingdom of Great Britain and Northern Ireland (including Jersey and Isle of Man)	(r)	2.VI.1930
<i>(denunciation — 13.VI.1977)</i>		
Gibraltar	(a)	2.XII.1930
<i>(denunciation — 22.IX.1977)</i>		
Bermuda, Hong Kong, Falkland Islands and dependencies, Turks & Caicos Islands, Cayman Islands, British Virgin Islands, Montserrat, British Antarctic Territories.		
<i>(denunciation 20.X.1983)</i>		
Anguilla	(a)	2.XII.1930
Ascension, Saint Helène and Dependencies	(a)	3.XI.1931
United States of America	(r)	29.VI.1937
Zaire	(a)	17.VII.1967

*Règles de Visby 1968**Visby Rules 1968*

**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 Bruselles
on 25 August 1924
Visby Rules**

Brussels, 23rd February 1968
Entered into force: 23 June, 1977

Belgium	(r)	6.IX.1978
Denmark	(r)	20.XI.1975
Ecuador	(a)	23.III.1977
Egypt	(r)	31.I.1983
Finland	(r)	1.XII.1984
France	(r)	10.VII.1977
Greece	(a)	23.III.1993
Italy	(r)	22.VIII.1985
Lebanon	(a)	19.VII.1975
Netherlands	(r)	26.IV.1982
Norway	(r)	19.III.1974
Poland	(r)	12.II.1980
Singapore	(a)	25.IV.1972
Sri-Lanka	(a)	21.X.1981
Sweden	(r)	9.XII.1974
Switzerland	(r)	11.XII.1975
Syrian Arab Republic	(a)	1.VIII.1974
Tonga	(a)	13.VI.1978
United Kingdom of Great Britain	(r)	1.X.1976
Bermuda, Hong-Kong	(a)	1.XI.1980
Gibraltar	(a)	22.IX.1977
Isle of Man	(a)	1.X.1976
British Antarctic Territories, Caimans, Caicos & Turks Islands, Falklands Islands & Dependencies, Montserrat, Virgin Islands (extension)	(a)	20.X.1983

*Protocole DTS 1979**SDR Protocol 1979*

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

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

Bruxelles, le 21 décembre 1979
 Entré en vigueur: 14 février 1984

Brussels, 21st December, 1979
 Entered into force: 14 February, 1984

Australia	(a)	16.VII.1993
Belgium	(r)	7.IX.1983
Denmark	(a)	3.XI.1983
Finland	(r)	1.XII.1984
France	(r)	18.XI.1986
Greece	(a)	23.III.1993
Italy	(r)	22.VIII.1985
Japan	(r)	1.III.1993
Mexico	(a)	20.V.1994
Netherlands	(r)	18.II.1986
New Zealand	(a)	20.XII.1994
Norway	(r)	1.XII.1983
Poland	(r)	6.VII.1984
Spain	(r)	6.I.1982
Sweden	(r)	14.XI.1983
Switzerland	(r)	20.I.1988
United Kingdom of Great-Britain and Northern Ireland	(r)	2.III.1982
Bermuda, British Antarctic Territories, Virgin Islands, Caimans, Falkland Islands & Dependencies, Gibraltar, Hong-Kong, Isle of Man, Montserrat, Caicos & Turks Island (extension)	(a)	20.X.1983

*Privilèges et hypothèques 1926**Liens and mortgages 1926*

**Convention internationale pour
l'unification de certaines
règles relatives aux
Privilèges et hypothèques
maritimes
et protocole de signature**

**International convention
for the unification of
certain rules relating to
Maritime liens and
mortgages
and protocol of signature**

Bruxelles, 10 avril 1926
entrée en vigueur 2 juin
1931

Brussels, 10th April, 1926
entered into force 2 June,
1931

(translation)

Algeria	(a)	13.IV.1964
Argentina	(a)	19.IV.1961
Belgium	(r)	2.VI.1930
Brazil	(r)	28.IV.1931
Cuba	(a)	21.XI.1983
Denmark	(r)	2.VI.1930
<i>(denunciation — 1.III.1965)</i>		
Estonia	(r)	2.VI.1930
Finland	(a)	12.VII.1934
<i>(denunciation — 1.III.1965)</i>		
France	(r)	23.VIII.1935
Haiti	(a)	19.III.1965
Hungary	(r)	2.VI.1930
Iran	(a)	8.IX.1966
Italy	(r)	7.XII.1949
Lebanon	(a)	18.III.1969
Luxembourg	(a)	18.II.1991
Malgache Republic	(r)	23.VIII.1935
Monaco	(a)	15.V.1931
Norway	(r)	10.X.1933
<i>(denunciation — 1.III.1965)</i>		
Poland	(r)	26.X.1936
Portugal	(a)	24.XII.1931
Romania	(r)	4.VIII.1937
Spain	(r)	2.VI.1930
Switzerland	(a)	28.V.1954
Sweden	(r)	1.VII.1938
<i>(denunciation — 1.III.1965)</i>		
Syrian Arab Republic	(a)	14.II.1951
Turkey	(a)	4.VII.1955
Uruguay	(a)	15.IX.1970
Zaire	(a)	17.VII.1967

*Immunité 1926**Immunity 1926*

**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, 10th April, 1926

and additional protocol

Brussels, May 24th, 1934

Entered into force: 8 January 1937

(Translation)

Argentina	(a)	19.IV.1961
Belgium	(r)	8.I.1936
Brazil	(r)	8.I.1936
Chile	(r)	8.I.1936
Cyprus	(a)	19.VII.1988
Denmark	(r)	16.XI.1950
Estonia	(r)	8.I.1936
France	(r)	27.VII.1955
Germany	(r)	27.VI.1936
Greece	(a)	19.V.1951
Hungary	(r)	8.I.1936
Italy	(r)	27.I.1937
Luxembourg	(a)	18.II.1991
Libyan Arab Jamahiriya	(r)	27.I.1937
Malgache Republic	(r)	27.I.1955
Netherlands	(r)	8.VII.1936
Curaçao, Dutch Indies		
Norway	(r)	25.IV.1939
Poland	(r)	16.VII.1976
Portugal	(r)	27.VI.1938
Romania	(r)	4.VIII.1937
		<i>(denunciation — 21.IX.1959)</i>
Somalia	(r)	27.I.1937
Sweden	(r)	1.VII.1938
Switzerland	(a)	28.V.1954
Suriname	(r)	8.VII.1936
Syrian Arab Republic	(a)	17.II.1960
Turkey	(a)	4.VII.1955
United Arab Republic	(a)	17.II.1960
United Kingdom	(r)	3.VII.1979
United Kingdom for Jersey, Guernsey and Island of Man	(a)	19.V.1988
Uruguay	(a)	15.IX.1970
Zaire	(a)	17.VII.1967

**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, 10th May, 1952
Entered into force:
14 September 1955

Algeria	(a)	18.VIII.1964
Antigua and Barbuda	(a)	12.V.1965
Argentina	(a)	19.IV.1961
Bahamas	(a)	12.V.1965
Belgium	(r)	10.IV.1961
Belize	(a)	21.IX.1965
Benin	(a)	23.IV.1958
Burkina Fasa	(a)	23.IV.1958
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica	(a)	13.VII.1955
Côte d'Ivoire	(a)	23.IV.1958
Croatia	(r)	8.X.1991
Cyprus	(a)	17.III.1994
Djibouti	(a)	23.IV.1958
Dominican Republic	(a)	12.V.1965
Egypt	(r)	24.VIII.1955
Fiji	(a)	10.X.1974
France	(r)	25.V.1957
Overseas Territories	(a)	23.IV.1958
Gabon	(a)	23.IV.1958
Germany	(r)	6.X.1972
Greece	(r)	15.III.1965
Grenada	(a)	12.V.1965
Guinea	(a)	23.IV.1958
Guyana	(a)	29.III.1963
Haute Volta	(a)	23.IV.1958
Holy Seat	(r)	10.VIII.1956
Ireland	(a)	17.X.1989
Italy	(r)	9.XI.1979
Khmere Republic	(a)	12.XI.1959
Kiribati	(a)	21.IX.1965
Luxembourg	(a)	18.II.1991
Malgache Republic	(a)	23.IV.1958
Mauritania	(a)	23.IV.1958

*Compétence civile 1952**Civil jurisdiction 1952*

Mauritius	(a)	29.III.1963
Morocco	(a)	11.VII.1990
Niger	(a)	23.IV.1958
Nigeria	(a)	7.XI.1963
North Borneo	(a)	29.III.1963
Paraguay	(a)	22.XI.1967
Poland	(a)	14.III.1986
Portugal	(r)	4.V.1957
Sarawak	(a)	29.VIII.1962
Senegal	(a)	23.IV.1958
Seychelles	(a)	29.III.1963
Slovenia	(a)	13.X.1993
Solomon Islands	(a)	21.IX.1965
Spain	(r)	8.XII.1953
St. Kitts and Nevis	(a)	12.V.1965
St. Lucia	(a)	12.V.1965
St. Vincent and the Grenadines	(a)	12.V.1965
Sudan	(a)	23.IV.1958
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974
Tchad	(a)	23.IV.1958
Togo	(a)	23.IV.1958
Tonga	(a)	13.VI.1978
Tuvalu	(a)	21.IX.1965
United Kingdom of Great Britain and		
Northern Ireland	(r)	18.III.1959
Gibraltar, Hong-Kong	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Caiman Islands, Montserrat	(a)	12.V.1965
Anguilla, St. Helena	(a)	12.V.1965
Turks Isles and Caicos	(a)	21.IX.1965
Guernsey	(a)	8.XII.1966
Falkland Islands and Dependencies	(a)	17.X.1969
Zaire	(a)	17.VII.1967

**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, 10th May, 1952
Entered into force:
20 November 1955

Antigua and Barbuda	(a)	12.V.1965
Argentina	(a)	19.IV.1961
Bahamas	(a)	12.V.1965
Belgium	(r)	10.IV.1961
Belize	(a)	21.IX.1965
Benin	(a)	23.IV.1958
Burkina Faso	(a)	23.IV.1958
Burman Union	(a)	8.VII.1953
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica	(a)	13.VII.1955
Croatia	(r)	8.X.1991
Cyprus	(a)	17.III.1994
Djibouti	(a)	23.IV.1958
Dominican Republic	(a)	12.V.1965
Egypt	(r)	24.VIII.1955
Fiji	(a)	29.III.1963
France	(r)	20.V.1955
Overseas Territories	(a)	23.IV.1958
Gabon	(a)	23.IV.1958
Germany	(r)	6.X.1972
Greece	(r)	15.III.1965
Grenada	(a)	12.V.1965
Guyana	(a)	19.III.1963
Guinea	(a)	23.IV.1958
Haiti	(a)	17.IX.1954
Haute-Volta	(a)	23.IV.1958
Holy Seat	(r)	10.VIII.1956
Italy	(r)	9.XI.1979
Ivory Coast	(a)	23.IV.1958
Khmere Republic	(a)	12.XI.1956
Kiribati	(a)	21.IX.1965

*Compétence pénale 1952**Penal jurisdiction 1952*

Lebanon	(r)	19.VII.1975
Luxembourg	(a)	18.II.1991
Malgache Republic	(a)	23.IV.1958
Mauritania	(a)	23.IV.1958
Mauritius	(a)	29.III.1963
Morocco	(a)	11.VII.1990
Netherlands	(r)	
Kingdom in Europe, West Indies and Aruba	(r)	25.VI.1971
Niger	(a)	23.IV.1958
Nigeria	(a)	7.XI.1963
North Borneo	(a)	29.III.1963
Paraguay	(a)	22.XI.1967
Portugal	(r)	4.V.1957
Sarawak	(a)	28.VIII.1962
Senegal	(a)	23.IV.1958
Seychelles	(a)	29.III.1963
Slovenia	(a)	13.X.1993
Solomon Islands	(a)	21.IX.1965
Spain	(r)	8.XII.1953
St. Kitts and Nevis	(a)	12.V.1965
St. Lucia	(a)	12.V.1965
St. Vincent and the Grenadines	(a)	12.V.1965
Sudan	(a)	23.IV.1958
Suriname	(r)	25.VI.1971
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	10.VII.1972
Tchad	(a)	23.IV.1958
Togo	(a)	23.IV.1958
Tonga	(a)	13.VI.1978
Tuvalu	(a)	21.IX.1965
United Kingdom of Great Britain and		
Northern Ireland	(r)	18.III.1959
Gibraltar, Hong-Kong	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Anguilla, Caïman Islands, Montserrat,		
St. Helena	(a)	12.V.1965
Turks Islands and Caicos	(a)	21.IX.1965
Guernsey	(a)	8.XII.1966
Falkland Islands and dependencies	(a)	17.X.1969
Viet Nam	(a)	26.XI.1955
Zaire	(a)	17.VII.1967

*Saisie des navires 1952**Arrest of ships 1952*

**Convention internationale pour
l'unification de certaines
règles sur la
Saisie conservatoire
des navires de mer**

**International convention for the
unification of certain rules
relating to
Arrest of sea-going ships**

Bruxelles, 10 mai 1952
Entrée en vigueur: 24 février 1956

Brussels, 10th May, 1952
Entered into force: 24 February, 1956

Algeria	(a)	18.VIII.1964
Antigua and Barbuda	(a)	12.V.1965
Bahamas	(a)	12.V.1965
Belgium	(r)	10.IV.1961
Belize	(a)	21.IX.1965
Benin	(a)	23.IV.1958
Burkina Faso	(a)	23.IV.1958
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica	(a)	13.VII.1955
Croatia	(r)	8.X.1991
Cuba	(a)	21.XI.1983
Denmark	(r)	2.V.1989
Djibouti	(a)	23.IV.1958
Dominican Republic	(a)	12.V.1965
Egypt	(r)	24.VIII.1955
Fiji	(a)	29.III.1963
France	(r)	25.V.1957
Overseas Territories	(a)	23.IV.1958
Gabon	(a)	23.IV.1958
Germany	(r)	6.X.1972
Greece	(r)	27.II.1967
Grenada	(a)	12.V.1965
Guyana	(a)	29.III.1963
Guinea	(a)	12.XII.1994
Haiti	(a)	4.XI.1954
Haute-Volta	(a)	23.IV.1958
Holy Seat	(r)	10.VIII.1956
Ireland	(a)	17.X.1989
Italy	(r)	9.XI.1979
Ivory Coast	(a)	23.IV.1958
Khmere Republic	(a)	12.XI.1956
Kiribati	(a)	21.IX.1965
Latvia	(a)	17.V.1993
Luxembourg	(a)	18.II.1991
Malgache Republic	(a)	23.IV.1958

*Saisie des navires 1952**Arrest of ships 1952*

Marocco	(a)	11.VII.1990
Mauritania	(a)	23.IV.1958
Mauritius	(a)	29.III.1963
Netherlands	(r)	20.I.1983
Niger	(a)	23.IV.1958
Nigeria	(a)	7.XI.1963
North Borneo	(a)	29.III.1963
Norway	(r)	1.XI.1994
Paraguay	(a)	22.XI.1967
Poland	(a)	16.VII.1976
Portugal	(r)	4.V.1957
Sarawak	(a)	28.VIII.1962
Senegal	(a)	23.IV.1958
Seychelles	(a)	29.III.1963
Slovenia	(a)	13.X.1993
Solomon Islands	(a)	21.IX.1965
Spain	(r)	8.XII.1953
St. Kitts and Nevis	(a)	12.V.1965
St. Lucia	(a)	12.V.1965
St. Vincent and the Grenadines	(a)	12.V.1965
Sudan	(a)	23.IV.1958
Sweden	(a)	30.IV.1993
Switzerland	(a)	28.V.1954
Syrian Arabic Republic	(a)	3.II.1972
Tchad	(a)	23.IV.1958
Togo	(a)	23.IV.1958
Tonga	(a)	13.VI.1978
Tuvalu	(a)	21.IX.1965
United Kingdom of Great Britain and Northern Ireland	(r)	18.III.1959
United Kingdom (Overseas Territories)		
Gibraltar, Hong-Kong	(a)	29.III.1963
British Vigin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Anguilla, Caiman Islands, Montserrat, St. Helena	(a)	12.V.1965
Turks Isles and Caicos	(a)	21.IX.1965
Guernsey	(a)	8.XII.1966
Falkland Islands and dependencies	(a)	17.X.1969
Zaire	(a)	17.VII.1967

*Limitation de responsabilité 1957**Limitation of liability 1957*

**Convention internationale
sur la
Limitation
de la responsabilité
des propriétaires
de navires de mer
et protocole de signature**

**International convention
relating to the
Limitation of the liability
of owners
of sea-going ships

and protocol of signature**

Bruxelles, le 10 octobre 1957
Entrée en vigueur: 31 mai 1968

Brussels, 10th October, 1957
Entered into force: 31 May, 1968

Algeria	(a)	18.VIII.1964
Australia (<i>denunciation — 30.V.1990</i>)	(r)	30.VII.1975
Bahamas	(a)	21.VIII.1964
Barbados	(a)	4.VIII.1965
Belgium (<i>denunciation — 1.IX.1989</i>)	(r)	31.VII.1975
Belize	(r)	31.VII.1975
Denmark (<i>denunciation — 1.IV.1984</i>)	(r)	1.III.1965
Dominican Republic	(a)	4.VIII.1965
Egypt (Arab Republic of) (<i>denunciation — 8.V.1985</i>)		
Fiji	(a)	21.VIII.1964
Finland (<i>denunciation — 1.IV.1984</i>)	(r)	19.VIII.1964
France (<i>denunciation — 15.VII.1987</i>)	(r)	7.VII.1959
Germany (<i>denunciation — 1.IX.1986</i>)	(r)	6.X.1972
Ghana	(a)	26.VII.1961
Grenada	(a)	4.VIII.1965
Guyana	(a)	25.III.1966
Iceland	(a)	16.X.1968
India	(r)	1.VI.1971
Iran	(r)	26.IV.1966
Israel	(r)	30.XI.1967
Japan (<i>denunciation — 19.V.1983</i>)	(r)	1.III.1976
Kiribati	(a)	21.VIII.1964
Lebanon	(a)	23.XII.1994
Malgache Republic	(a)	13.VII.1965
Mauritius	(a)	21.VIII.1964
Monaco	(a)	24.I.1977
Netherlands (<i>denunciation — 1.IX.1989</i>)	(r)	10.XII.1965

*Limitation de responsabilité 1957**Limitation of liability 1957*

Norway	(r)	1.III.1965
<i>(denunciation — 1.IV.1984)</i>		
Papua New Guinea	(a)	14.III.1980
Poland	(r)	1.XII.1972
Portugal	(r)	8.IV.1968
Seychelles	(a)	21.VIII.1964
Singapore	(a)	17.IV.1963
Solomon Islands	(a)	21.VIII.1964
St. Lucia	(a)	4.VIII.1965
St. Vincent and the Grenadines	(a)	4.VIII.1965
Spain	(r)	16.VII.1959
Sweden	(r)	4.VI.1964
<i>(denunciation — 1.IV.1984)</i>		
Switzerland	(r)	21.I.1966
Syrian Arab Republic	(a)	10.VII.1972
Tonga	(a)	13.VI.1978
Tuvalu	(a)	21.VIII.1964
United Arab Republic	(a)	7.IX.1965
United Kingdom	(r)	18.II.1959
Isle of Man	(a)	18.XI.1960
Bermuda, British Antarctic Territories, Falkland and Dependencies, Gibraltar, Hong Kong, British Virgin Islands	(a)	21.VIII.1964
Guernsey and Jersey	(a)	21.X.1964
Caiman Islands, Montserrat, Caicos and Turks Isles	(a)	4.VIII.1965
Vanuatu	(a)	8.XII.1966
Zaire	(a)	17.VII.1967

*Limitation Protocol 1979**Stowaways 1957*

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
Poland
Portugal
Spain
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, 21st 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

Convention internationale sur les Passagers Clandestins

Bruxelles, 10 octobre 1957

Belgium
Denmark
Finland
Italy
Luxembourg
Malgache Republic
Morocco
Norway
Peru
Sweden

International convention relating to Stowaways

Brussels, 10th October 1957

(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
(r) 27.VI.1962

*Carriage of passengers 1961**Nuclear ships 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
Malgache Republic
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, 29th 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

**Convention internationale
relative à la responsabilité
des exploitants de
Navires nucléaires
et protocole additionnel**

Bruxelles, 25 mai 1962
Pas encore en vigueur

Lebanon
Malgache Republic
Netherlands
Portugal
Suriname
Syrian Arab Republic
Zaire

**International convention
relating to the liability
of operators of
Nuclear ships
and additional protocol**

Brussels, 25th May 1962
Not yet in force

(r) 3.VI.1975
(a) 13.VII.1965
(r) 20.III.1974
(r) 31.VII.1968
(r) 20.III.1974
(a) 1.VIII.1974
(a) 17.VII.1967

*Vesses under construction 1967**Liens and mortgages 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

Algeria
Cuba

(a) 2.VII.1973
(a) 15.II.1972

**Convention internationale relative à
l'inscription des droits relatifs aux
Navires en construction**

Bruxelles, 27 mai 1967
Pas encore en vigueur

Croatia
Greece
Norway
Sweden
Syrian Arab Republic

(r) 3.V.1971
(r) 12.VII.1974
(r) 13.V.1975
(r) 13.XI.1975
(a) 1.XIII.1974

**Convention internationale
pour l'unification de
certaines règles relatives aux
Privilèges et hypothèques
maritimes**

Bruxelles, 27 mai 1967
Pas encore in vigueur

Denmark
Morocco
Norway
Sweden
Syrian Arab Republic

**International Convention
for the unification of
certain rules relating to
Carriage of passengers'
luggage by sea**

Brussels, 27th May 1967
Not in force

**International convention relating
to the registration of rights
in respect of
Vessels under construction**

Brussels, 27th May 1967
Not yet in force

**International convention
for the unification of
certain rules relating to
Maritime liens and
mortgages**

Brussels, 27th May 1967
Not yet in force

(r) 23.VIII.1977
(a) 12.II.1987
(r) 13.V.1975
(r) 13.XI.1975
(a) 1.VIII.1974

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE IMO CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

r	= ratification
a	= accession
A	= acceptance
AA	= approval
S	= definitive signature

Editor's notes

This Status is based on advices from the International Maritime Organisation and reflects the situation as at 31st December, 1992. A number of reservations — not included in this booklet — have been made by certain contracting States to the IMO Conventions. Their text can be obtained from the C.M.I. Secretariat upon request.

The dates mentioned are the dates of the deposit of instruments.

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS DE L'OMI EN MATIERE DE DROIT MARITIME PRIVE

Notes de l'éditeur

Cet état est basé sur des informations reçues de l'Organisation Maritime Internationale et reflète la situation au 31 décembre 1992. Des réserves — ne figurant pas dans ce livre — ont été posées par certains États parties aux Conventions de l'OMI. Leur texte peut être obtenu sur demande au Secrétariat du C.M.I.

Les dates mentionnées sont les dates du dépôt des instruments.

CLC 1969

**International Convention on
Civil liability
for oil pollution damage
(CLC 1969)**

**Convention Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les hydrocarbures
(CLC 1969)**

Done at Brussels, 29 November 1969
Entered into force: 19 June, 1975

Signée à Bruxelles, le 29 novembre 1969
Entrée en vigueur: 19 juin 1975

Algeria	(a)	14.VI.1974
Australia	(r)	7.XI.1983
<i>(denunciation 22 June 1988)</i>		
Bahamas	(a)	22.VII.1976
Belgium	(r)	12.I.1977
Belize	(a)	2.IV.1991
Benin	(a)	1.XI.1985
Brazil	(r)	17.XII.1976
Brunei Darussalam	(a)	29.IX.1992
Cameroon	(r)	14.V.1984
Canada	(a)	24.I.1989
Chile	(a)	2.VIII.1977
China	(a)	30.I.1980
Colombia	(a)	26.III.1990
Côte d'Ivoire	(r)	21.VI.1973
Croatia	(r)	8.X.1991
Cyprus	(a)	19.VI.1989
Denmark	(a)	2.IV.1975
Djibouti	(a)	1.III.1990
Dominican Republic	(r)	2.IV.1975
Ecuador	(a)	23.XII.1976
Egypt	(a)	3.II.1989
Estonia	(a)	1.XII.1992
Fiji	(a)	15.VIII.1972
Finland	(r)	10.X.1980
France	(r)	17.III.1975
Gabon	(a)	21.I.1982
Gambia	(a)	1.XI.1991
Germany	(r)	20.V.1975
Ghana	(r)	20.IV.1978
Greece	(a)	29.VI.1976
Guatemala	(a)	20.X.1982
Iceland	(r)	17.VII.1980
India	(a)	1.V.1987
Indonesia	(r)	1.IX.1978
Ireland	(r)	19.XI.1992
Italy	(r)	27.II.1979
Japan	(a)	3.VI.1976

CLC 1969

Kenya	(a)	15.XII.1992
Korea (Rep.of)	(a)	18.XII.1978
Kuwait	(a)	2.IV.1981
Latvia	(a)	10.VII.1992
Lebanon	(a)	9.IV.1974
Liberia	(a)	25.IX.1972
Luxembourg	(a)	14.II.1991
Maldives	(a)	16.III.1981
Malta	(a)	27.IX.1991
Mexico	(a)	13.V.1994
Monaco	(r)	21.VIII.1975
Morocco	(a)	11.IV.1974
Netherlands	(r)	9.IX.1975
New Zealand	(a)	27.IV.1976
Nigeria	(a)	7.V.1981
Norway	(a)	21.III.1975
Oman	(a)	24.I.1985
Panama	(r)	7.I.1976
Papua New Guinea	(a)	12.III.1980
Perù	(a)	24.II.1987
Poland	(r)	18.III.1976
Portugal	(r)	26.XI.1976
Qatar	(a)	2.VI.1988
Russian Federation	(a)	24.VI.1975
Saudi Arabia	(a)	15.IV.1993
St.-Vincent and the Grenadines	(a)	19.VI.1989
Senegal	(a)	27.III.1972
Seychelles	(a)	12.IV.1988
Singapore	(a)	16.IX.1981
Slovenia (succession)	(a)	25.VI.1991
South Africa	(a)	17.III.1976
Spain	(r)	8.XII.1975
Sri Lanka	(a)	12.IV.1983
Sweden	(r)	17.III.1975
Switzerland	(r)	15.XII.1987
Syrian Arab Republic	(a)	6.II.1975
Tunisia	(a)	4.V.1976
Tuvalu (succession)	(a)	1.X.1978
United Arab Emirates	(a)	15.XII.1983
United Kingdom	(r)	17.III.1975
Vanuatu	(a)	2.II.1983
Venezuela	(a)	21.I.1992
Yemen	(a)	6.III.1979

CLC 1969

The Convention applies provisionally to the following States:

Kiribati
Solomon Islands

The United Kingdom declared ratification to be effective also in respect of:

Anguilla	8.V.1984
Bailiwick of Jersey and Guernsey, Isle of Man	1.III.1976
Bermuda	1.III.1976
Belize	1.IV.1976
British Indian Ocean Territory	“
British Virgin Islands	“
Cayman Islands	“
Falkland Islands and Dependencies	“
Gibraltar	“
Gilbert Islands	“
Hong-Kong	“
Montserrat	“
Pitcairn	“
St.Helena and Dependencies	“
Seychelles	“
Solomon Islands	“
Turks and Caicos Islands	“
Tuvalu	“
United Kingdom Sovereign Base	“
Areas of Akrotiri and Dhekelia	“
in the Island of Cyprus	“

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

Australia	(a)	7.XI.1983
<i>denunciation</i>		22 June 1988
Bahamas	(acc)	3.III.1980
Belgium	(a)	15.VI.1989
Belize	(a)	2.IV.1991
Brunei Darussalam	(a)	29.IX.1992
Cameroon	(a)	14.V.1984
Canada	(a)	24.I.1989
China	(a)	29.IX.1986
Colombia	(a)	26.III.1990
Cyprus	(a)	19.VI.1989
Denmark	(a)	3.VI.1981
Egypt	(a)	3.II.1989
Finland	(a)	8.I.1981
France	(A A)	7.XI.1980
Germany	(r)	28.VIII.1980
Greece	(a)	10.V.1989
India	(a)	1.V.1987
Ireland	(a)	19.XI.1992
Italy	(a)	3.VI.1983
Korea, Republic of	(a)	8.XII.1992
Kuwait	(a)	1.VII.1981
Liberia	(a)	17.II.1981
Luxemburg	(a)	14.II.1991
Maldives	(a)	14.VI.1981
Malta	(a)	27.IX.1991
Mexico	(a)	13.V.1994
Netherlands	(a)	3.VIII.1982
Norway	(a)	17.VII.1978
Oman	(a)	24.I.1985
Peru	(a)	24.II.1987
Poland	(a)	30.X.1985
Portugal	(a)	2.I.1986
Qatar	(a)	2.VI.1988
Russian Federation	(a)	2.XII.1988
Saudi Arabia	(a)	15.IV.1993

*CLC PROT 1976**CLC PROT 1984*

Singapore	(a)	15.XII.1981
Spain	(a)	22.X.1981
Sweden	(r)	7.VII.1978
Switzerland	(a)	15.XII.1987
United Arab Emirates	(a)	14.III.1984
United Kingdom (1)	(r)	31.I.1980
Vanuatu	(a)	13.I.1989
Venezuela	(a)	21.I.1992
Yemen	(a)	4.VI.1979

(1) The ratification by the United Kingdom was declared to be effective also in respect of: Anguilla, Bailiwick of Jersey, Bailiwick of Guernsey, Isle of Man, Belize has since become an independent state to which the Protocol applies provisionally, Bermuda, British Indian Ocean Territory, 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.

**Protocol of 1984 to amend the
International Convention on**

**Civil liability for oil
pollution damage, 1969**

(CLC PROT 1984)

Donc at London,
25 May 1984
Not yet in force.

**Protocole de 1984 portant
modification à la Convention
Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les
hydrocarbures, 1969**

(CLC PROT 1984)

Signé à Londres,
le 25 mai 1984
Pas encore en vigueur.

Australia	(a)	22.VI.1988
France	(r)	8.IX.1987
Germany	(r)	18.X.1988
Luxemburg	(a)	14.II.1991
Morocco	(r)	31.XII.1992
Peru	(a)	26.VIII.1987
St.-Vincent and the Grenadines	(a)	19.IV.1989
South Africa	(a)	31.I.1986
Venezuela	(a)	21.I.1992

*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

Algeria	(r)	2.VI.1975
Bahamas	(a)	22.VII.1976
Belgium	(r)	1.XII.1994
Benin	(a)	1.XI.1985
Brunei Darussalam	(a)	29.IX.1992
Cameroon	(a)	14.V.1984
Canada	(a)	24.I.1989
Côte d'Ivoire	(a)	5.X.1987
Croatia (1)	(r)	8.X.1991
Cyprus	(a)	26.VII.1989
Denmark	(a)	2.IV.1975
Djibouti	(a)	1.III.1990
Estonia	(a)	I.XII.1992
Fiji	(a)	4.III.1983
Finland	(r)	10.X.1980
France	(a)	11.V.1978
Gabon	(a)	21.I.1982
Gambia	(a)	1.XI.1991
Germany	(r)	30.XII.1976
Ghana	(r)	20.IV.1978
Greece	(a)	16.XII.1986
Iceland	(a)	17.VII.1980
India	(a)	10.VII.1990
Indonesia	(a)	1.IX.1978
Ireland	(r)	19.XI.1992
Italy	(a)	27.II.1979
Japan	(r)	7.VII.1976
Kenya	(a)	15.XII.1992
Korea, Republic of	(a)	8.XII.1992
Kuwait	(a)	2.IV.1981
Liberia	(a)	25.IX.1972

(1) On 11 August 1992 Croatia notified its succession to this Conventions as of the date of its independence (8.10.1991).

<i>Fund 1971</i>		<i>Fonds 1971</i>
Maldives	(a)	16.III.1981
Malta	(a)	27.IX.1991
Mexico	(a)	13.V.1994
Monaco	(a)	23.VIII.1979
Morocco	(r)	31.XII.1992
Netherlands	(A A)	3.VIII.1982
Nigeria	(a)	11.XI.1987
Norway	(r)	21.III.1975
Oman	(a)	10.V.1985
Papua New Guinea	(a)	12.III.1980
Poland	(r)	16.IX.1985
Portugal	(r)	11.IX.1985
Qatar	(a)	2.VI.1988
Russian Federation (2)	(a)	17.VI.1987
Seychelles	(a)	12.IV.1988
Sierra Leone	(a)	13.VIII.1993
Slovenia (succession)	(a)	25.VI.1991
Spain	(a)	8.X.1981
Sri Lanka	(a)	12.IV.1983
Sweden	(r)	17.III.1975
Syrian Arab Republic	(a)	6.II.1975
Tunisia	(a)	4.V.1976
Tuvalu	(succession)	
United Arab Emirates	(a)	15.XII.1983
United Kingdom (3)	(r)	2.IV.1976
Vanuatu	(a)	13.I.1989
Venezuela	(a)	21.I.1992
Yugoslavia	(r)	16.III.1978

(2) As from 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

(3) The ratification by the United Kingdom was declared to be effective also in respect of:

- Anguilla: 1.IX.1984
 - Bailiwick of Guernsey, Bailiwick of Jersey, Isle of Man, Belize (has since become the independent State of Belize), Bermuda, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands and Dependencies (see communication of the London Embassy of the Argentine Republic at p. 185), Gibraltar, Gilbert Islands (has since become the independent State of Kiribati), Hong-Kong, Montserrat, Pitcairn Group, St. Helena and Dependencies, Seychelles (has since become the independent State of Seychelles), Solomon Islands (has since become the independent State of Solomon Islands), Turks and Caicos Islands, Tuvalu (has since become an independent State and a Contracting State to the Convention), United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus: 16.X.1978

*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
Not yet in force

**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 à Londres, le 19 novembre 1976
Pas encore entré en vigueur

Bahamas	(A)	3.III.1980
Belgium	(r)	1.XII.1994
Cyprus	(a)	26.VII.1989
Denmark	(a)	3.VI.1981
Finland	(a)	8.I.1981
France	(a)	7.XI.1980
Germany	(r)	28.VIII.1980
India	(a)	10.VII.1990
Ireland	(a)	19.XI.1992
Italy	(a)	21.IX.1983
Liberia	(a)	17.II.1981
Malta	(a)	27.IX.1991
Morocco	(a)	31.XII.1992
Netherlands	(a)	1.XI.1982
Norway	(a)	17.VII.1978
Poland	(a)	30.X.1985
Portugal	(a)	11.IX.1985
Russian Federation	(a)	30.I.1989
Spain	(a)	5.IV.1982
Sweden	(r)	7.VII.1978
United Kingdom (2)	(r)	31.I.1980
Vanuatu	(a)	13.I.1989
Venezuela	(a)	21.I.1992

Number of Contracting States: 19 (representing approximately two thirds of the total quantity of contributing oil required for entry into force).

(1) As from 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

(2) The ratification by the United Kingdom was declared to be effective also in respect of: Anguilla, Bailiwick of Jersey, Bailiwick of Guernsey, Isle of Man, Belize (has since become the independent State of Belize), Bermuda, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands Gibraltar, Hong-Kong, Montserrat, Pitcairn, St. Helena and Dependencies, Turks and Caicos Islands, United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus.

*Fund Protocol 1984**Nuclear 1971*

**Protocol of 1984 to amend
the International
Convention on the
Establishment of an
International
Fund for compensation
for oil pollution damage**

(FUND PROT 1984)

Done at London, 25 May 1984
Not yet in force.

France
Germany
Morocco
Venezuela

(AA)	8.IX.1987
(r)	18.X.1988
(r)	31.XII.1992
(a)	21.I.1992

**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

Argentina
Belgium
Denmark (1)
Finland
France
Gabon
Germany
Italy
Liberia
Netherlands
Norway
Spain
Sweden
Yemen

(a)	18.V.1981
(r)	15.VI.1989
(r)	4.IX.1974
(A)	6.VI.1991
(r)	2.II.1973
(a)	21.I.1982
(r)	1.X.1975
(r)	21.VII.1980
(a)	17.II.1981
(a)	1.VIII.1991
(r)	16.IV.1975
(a)	21.V.1974
(r)	22.XI.1974
(a)	6.III.1979

**Protocole de 1984 modifiant
à 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 1984)

Signé à Londres,
le 25 mai 1984
Pas encore entré en vigueur

**Convention relative à la
Responsabilité Civile dans
le Domaine du
Transport Maritime
de matières nucléaires
(NUCLEAR 1971)**

Signée à Bruxelles,
le 17 décembre 1971
Entrée en vigueur: 15 juillet 1975

(1) Shall not apply to the Faroe Islands.

Carriage of passengers and luggage - PAL 1974

**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

Argentina	(a)	26.V.1983
Bahamas	(a)	7.VI.1983
Belgium	(a)	15.VI.1989
Egypt	(a)	18.X.1991
Germany (1)	(a)	29.VII.1979
Greece	(A)	3.VII.1991
Liberia	(a)	17.II.1981
Luxemburg	(a)	14.II.1991
Malawi	(a)	9.III.1993
Poland	(r)	28.I.1987
Russian Federation (2)	(a)	27.IV.1983
Spain	(a)	8.X.1981
Switzerland	(r)	15.XII.1987
Tonga	(a)	15.II.1977
United Kingdom (3)	(r)	31.I.1980
Vanuatu	(a)	13.I.1989
Yemen	(a)	6.III.1979

(1) The Convention is in force only in the new five Federal States formerly constituting the German Democratic Republic: Brandenburg, Mecklenburg - Vorpommern, Sachsen, Sachsen - Anhalt and Thüringen.

(2) As of 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

(3) 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.

*PAL Protocol 1976**PAL Protocol 1990*

**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: 10 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: 10 avril 1989

Argentina	(a)	28.IV.1987
Bahamas	(a)	28.IV.1987
Belgium	(a)	15.VI.1989
Greece	(a)	3.VII.1991
Liberia	(a)	28.IV.1987
Luxemburg	(a)	14.II.1991
Poland	(a)	28.IV.1987
Russian Federation (1)	(a)	30.I.1989
Spain	(a)	28.IV.1987
Switzerland	(a)	15.XII.1987
United Kingdom (2)	(r)	28.IV.1987
Vanuatu	(a)	13.I.1989
Yemen	(a)	28.IV.1987

(1) As of 26 December 1991 the membership of the USSR in the Convention is continued by the Russian Federation.

(2) 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.

**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:

Egypt	(a)	18.X.1991
Spain	(a)	24.II.1993

*Limitation of liability - 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

Australia	(a)	20.II.1991
Bahamas	(a)	7.VI.1983
Belgium	(a)	15.VI.1989
Benin	(a)	1.XI.1985
Croatia	(a)	2.III.1993
Denmark	(r)	30.V.1984
Egypt	(a)	30.III.1988
Finland	(r)	8.V.1984
France	(AA)	1.VII.1981
Germany	(r)	12.V.1987
Greece	(a)	3.VII.1991
Japan	(a)	4.VI.1982
Liberia	(a)	17.II.1981
Mexico	(a)	13.V.1994
Netherlands	(a)	15.V.1990
Norway	(r)	30.III.1984
Poland	(a)	28.IV.1986
Spain	(r)	13.XI.1981
Sweden	(r)	30.III.1984
Switzerland	(a)	15.XII.1987
United Kingdom	(r)	31.I.1980
Vanuatu	(a)	14.IX.1992
Yemen	(a)	6.III.1979

*Salvage 1989**Oil pollution preparedness 1990*

**International Convention on
Salvage, 1989
(SALVAGE 1989)**

Done at London: 28 April 1989
Not yet in force.

Egypt
Mexico
Nigeria
Oman
Saudi Arabia
Switzerland
United States

(a) 14.III.1991
(r) 10.X.1991
(r) 11.X.1990
(a) 14.X.1991
(a) 16.XII.1991
(r) 12.III.1993
(r) 27.III.1992

**Convention Internationale
de 1989 sur l'Assistance
(ASSISTANCE 1989)**

Signée à Londres le 28 avril 1989
Pas encore entrée en vigueur.

**International Convention on
Oil pollution preparedness,
response and co-operation
1990**

Done at London 30
November 1990
Not yet in force.

Argentina
Australia
Canada
Egypt
Finland
France
Iceland
Mexico
Netherlands
Nigeria
Norway
Pakistan
Senegal
Seychelles
Spain
Sweden
United States
Venezuela

**Convention Internationale de
1990 sur la Preparation, la
lutte et la cooperation en
matière de pollution par les
hydrocarbures**

Signée à Londres le 30
novembre 1990
Pas encore en vigueur.

(r) 13.VII.1994
(a) 6.VII.1992
(a) 7.III.1994
(r) 29.VI.1992
(AA) 21.VI.1993
(AA) 21.VII.1993
(r) 6.XI.1992
(a) 13.V.1994
(r) 1.XII.1994
(a) 25.V.1993
(r) 8.III.1994
(a) 21.VII.1993
(r) 24.III.1994
(a) 26.VI.1992
(r) 12.I.1994
(r) 30.III.1992
(r) 27.III.1992
(r) 12.XII.1994

**STATUS OF THE RATIFICATIONS OF
AND ACCESSIONS TO UNITED NATIONS
CONVENTIONS IN THE FIELD OF
PRIVATE MARITIME LAW**

**ETAT DES RATIFICATIONS ET ADHESIONS
AUX CONVENTIONS DES NATIONS UNIES
EN MATIERE 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
Code of Conduct
for liner conferences**

**Convention des Nations Unies sur
un
Code de Conduite
des conférences
maritimes**

Geneva, 6 April, 1974
Entered into force: 6 October 1983

Genève, 6 avril 1974
Entrée en vigueur: 6 octobre 1983

Algeria	(r)	12.XII.1986
Aruba	(a)	1.I.1986
Bangladesh	(a)	24.VII.1975
Barbados	(a)	29.X.1980
Belgium	(r)	30.IX.1987
Belarus	(A)	28.VI.1979
Benin	(a)	27.X.1975
Bulgaria	(a)	12.VII.1979
Burkina Faso	(a)	30.III.1989
Cameroon	(a)	15.VI.1976
Cape Verde	(a)	13.I.1978
Central African Republic	(a)	13.V.1977
Chile	(S)	25.VI.1975
China	(a)	23.IX.1980
Congo	(a)	26.VII.1982
Costa Rica	(r)	27.X.1978
Croatia	(r)	8.X.1991
Cuba	(a)	23.VII.1976
Czech Republic	(AA)	4.VI.1979
Denmark (except Greenland and the Faroe Islands)	(a)	28.VI.1985
Egypt	(a)	25.I.1979
Ethiopia	(r)	1.IX.1978
Finland	(a)	31.XII.1985
France	(AA)	4.X.1985
Gabon	(r)	5.VI.1978
Gambia	(S)	30.VI.1975
Germany	(r)	6.IV.1983
Ghana	(r)	24.VI.1975
Gibraltar	(a)	28.VI.1985
Guatemala	(r)	3.III.1976
Guinea	(a)	19.VIII.1980
Guyana	(a)	7.I.1980
Honduras	(a)	12.VI.1979
Hong Kong	(a)	28.VI.1985
India	(r)	14.II.1978
Indonesia	(r)	11.I.1977
Iraq	(a)	25.X.1978

*Code of conduct 1974**Code de conduite 1974*

Italy	(a)	30.V.1989
Ivory Coast	(r)	17.II.1977
Jamaica	(a)	20.VII.1982
Jordan	(a)	17.III.1980
Kenya	(a)	27.II.1978
Korea (Rep. of)	(a)	11.V.1979
Kuwait	(a)	31.III.1986
Lebanon	(a)	30.IV.1982
Madagascar	(a)	23.XII.1977
Malaysia	(a)	27.VIII.1982
Mali	(a)	15.III.1978
Mauritania	(a)	21.III.1988
Mauritius	(a)	16.IX.1980
Mexico	(a)	6.V.1976
Morocco	(a)	11.II.1980
Mozambique	(a)	21.IX.1990
Netherlands (for the Kingdom in Europe only)	(a)	6.IV.1983
Niger	(r)	13.I.1976
Nigeria	(a)	10.IX.1975
Norway	(a)	28.VI.1985
Pakistan	(S)	27.VI.1975
Peru	(a)	21.XI.1978
Philippines	(r)	2.III.1976
Portugal	(a)	13.VI.1990
Romania	(a)	7.I.1982
Russian Federation	(A)	28.VI.1979
Saudi Arabia	(a)	24.V.1985
Senegal	(r)	20.V.1977
Sierra Leone	(a)	9.VII.1979
Slovakia	(AA)	4.VI.1979
Slovenia	(AA)	4.VI.1979
Somalia	(a)	14.XI.1988
Spain	(a)	3.II.1994
Sri Lanka	(S)	30.VI.1975
Sudan	(a)	16.III.1978
Sweden	(a)	28.VI.1985
Togo	(r)	12.I.1978
Trinidad and Tobago	(a)	3.VIII.1983
Tunisia	(a)	15.III.1979
Ukraine	(A)	26.VI.1979
United Kingdom	(a)	28.VI.1985
United Republic of Tanzania	(a)	3.XI.1975
Uruguay	(a)	9.VII.1979
Venezuela	(S)	30.VI.1975
Yugoslavia	(r)	7.VII.1980
Zaire	(a)	25.VII.1977
Zambia	(a)	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”**

Entry 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

Austria	(r)	29.VII.1993
Barbados	(a)	2.II.1981
Botswana	(a)	16.II.1988
Burkina Faso	(a)	14.VIII.1989
Cameroon	(a)	21.X.1993
Chile	(r)	9.VII.1982
Egypt	(r)	23.IV.1979
Guinea	(r)	23.I.1991
Hungary	(r)	5.VII.1984
Kenya	(a)	31.VII.1989
Lebanon	(a)	4.IV.1983
Lesotho	(a)	26.X.1989
Malawi	(r)	18.III.1991
Morocco	(a)	12.VI.1981
Nigeria	(a)	7.XI.1988
Romania	(a)	7.I.1982
Senegal	(r)	17.III.1986
Sierra Leone	(r)	7.X.1988
Tanzania (United Rep. of)	(a)	24.VII.1979
Tunisia	(a)	15.IX.1980
Uganda	(a)	6.VII.1979
Zambia	(a)	7.X.1991

*Multimodal transport 1980**UNCLOS 1982*

**United Nations Convention
on the
International multimodal
transport of goods**

Geneva, 24 May, 1980,
Not yet in force.

Chile
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.

(r) 7.IV.1982
(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

Angola
Antigua and Barbuda
Bahamas
Bahrain
Belize
Botswana
Brazil
Cameroon
Cape Verde
Cuba
Djibouti
Dominica
Egypt
Fiji
Gambia
Ghana

**Convention des Nations
Unies sur les Droit de la Mer**

Montego Bay 10 decembre 1982
Entrée en vigueur:
16 Novembre 1994

5.XII.1990
2.II.1989
29.VII.1983
30.V.1985
13.VIII.1983
2.V.1990
22.XII.1988
19.XII.1985
10.VIII.1987
12.XII.1988
8.X.1991
24.X.1991
26.VIII.1983
10.XII.1982
22.V.1984
7.VI.1983

*UNCLOS 1982**UNCLOS 1982*

Grenada	25.IV.1991
Guinea	6.IX.1985
Guinea-Bissau	24.VIII.1986
Iceland	21.VI.1985
Indonesia	3.II.1986
Iraq	30.VII.1985
Ivory Coast	26.III.1984
Jamaica	21.III.1983
Kenya	2.III.1989
Kuwait	2.V.1986
Mali	16.VII.1985
Marshall Islands	9.VIII.1991
Mexico	18.III.1983
Micronesia	29.VI.1991
Namibia, United Nations Council for	18.VI.1983
Nigeria	14.VIII.1986
Oman	17.VIII.1989
Paraguay	26.IX.1986
Philippines	8.V.1984
St. Lucia	27.III.1985
Sao Tomé and Príncipe	3.XI.1987
Senegal	25.X.1984
Seychelles	16.IX.1991
Somalia	24.VII.1989
Sudan	23.I.1985
Tanzania	30.IX.1985
Togo	16.IV.1985
Trinidad and Tobago	25.IV.1986
Tunisia	24.IV.1985
Yemen, Democratic Republic of	21.VII.1987
Yugoslavia	5.V.1986
Zaire	17.II.1989
Zambia	7.III.1983

*Registration of ships 1986**Immatriculation des navires 1986*

**United Nations Convention
on Conditions for
Registration of ships**

Geneva, 7 February, 1986
Not yet in force.

Egypt
Ghana
Haiti
Hungary
Iraq
Ivory Coast
Libyan Arab Jamahiriya
Mexico
Oman

**Convention des Nations
Unies sur les Conditions d'
Immatriculation des navires**

Genève, 7 février 1986
Pas encore entrée en vigueur.

(r)	9.I.1992
(a)	29.VIII.1990
(a)	17.V.1989
(a)	23.I.1989
(a)	1.II.1989
(r)	28.X.1987
(r)	28.II.1989
(r)	21.I.1988
(a)	18.X.1990

**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.

**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.

**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

Not yet in force.

**Convention de Unidroit sur
le Creditbail international
1988**

Signée à Ottawa 28 mai 1988

Pas encore en vigueur.

**CONFERENCES
OF THE COMITE MARITIME INTERNATIONAL**

**CONFERENCES
DU COMITE MARITIME INTERNATIONAL**

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 Ma-
ritime Mortgages and Liens - Brussels Diplomatic Conference.

CONFERENCES

DU COMITE MARITIME INTERNATIONAL

I. BRUXELLES - 1897

Président: Mr. Auguste BEERNAERT.

Sujets: Organisation du Comité Maritime International - Abordage - Responsabilité des propriétaires de navires de mer.

II. ANVERS - 1898

Président: Mr. Auguste BEERNAERT.

Sujets: Responsabilité des propriétaires de navires de mer.

III. LONDRES - 1899

Président: Sir Walter PHILLIMORE.

Sujets: Abordages dans lesquels les deux navires sont fautifs - Responsabilité des propriétaires de navires.

IV. PARIS - 1900

Président: Mr. LYON-CAEN

Sujets: Assistance, sauvetage et l'obligation de prêter assistance - Compétence en matière d'abordage.

V. HAMBURG - 1902

Président: Dr. Friedrich SIEVEKING.

Sujets: Code international pour l'abordage et le sauvetage en mer - Compétence en matière d'abordage. - Conflits de lois concernant la propriété des navires - Privilèges et hypothèques sur navires.

VI. AMSTERDAM - 1904

Président: Mr. E.N. RAHUSEN.

Sujets: Conflits de lois en matière de privilèges et hypothèques sur navires. - Compétence en matière d'abordage - Limitation de la responsabilité des propriétaires de navires.

VII. LIVERPOOL - 1905

Président: Sir William R. KENNEDY.

Sujets: Limitation de la responsabilité des propriétaires de navires - Conflits de lois en matière de privilèges et hypothèques - Conférence Diplomatique de Bruxelles.

Conferences of the Comité Maritime International

VIII. VENICE - 1907

President: Mr. Alberto MARGHIERI.

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.

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.

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XII. ANTWERP - 1921

President: Mr. Louis FRANCK.

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- Limitation of Shipowners' Liability - Maritime Mortgages and Liens
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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.

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VIII. VENISE - 1907

Président: Mr. Alberto MARGHIERI.*Sujets:* Limitation de la responsabilité des propriétaires de navires - Privilèges et hypothèques maritimes - Conflits de lois relatifs au fret.

IX. BREME - 1909

Président: Dr. Friedrich SIEVEKING.*Sujets:* Conflits de lois relatifs au fret - Indemnisation concernant des lésions corporelles - Publications des privilèges et hypothèques maritimes.

X. PARIS - 1911

Président: Mr. Paul GOVARE.*Sujets:* Limitation de la responsabilité des propriétaires de navires en cas de perte de vie ou de lésions corporelles - Fret.

XI. COPENHAGUE - 1913

Président: Dr. J.H.KOCH.*Sujets:* Déclaration de Londres 1909 - Sécurité de la navigation - Code international de l'affrètement - Assurance de propriétés ennemies.

XII. ANVERS - 1921

Président: Mr. Louis FRANCK.*Sujets:* Convention internationale concernant l'abordage et la sauvetage en mer - Limitation de la responsabilité des propriétaires de navires de mer - Privilèges et hypothèques maritimes - Code de l'affrètement - Clauses d'exonération dans les connaissements.

XIII. LONDRES - 1922

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XIV. GOTHEMBOURG - 1923

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XV. GENES - 1925

Président: Dr. Francesco BERLINGIERI.*Sujets:* Assurance obligatoire des passagers - Immunité des navires d'Etat. - Code international de l'affrètement - Privilèges et hypothèques maritimes.

XVI. AMSTERDAM - 1927

Président: Mr. B.C.J. LODER.*Sujets:* Assurance obligatoire des passagers - Lettres de garantie - Ratification des Conventions de Bruxelles.

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President: Mr. Louis FRANCK.

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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 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.

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Président: Mr. Louis FRANCK.*Sujets:* Ratification des Conventions de Bruxelles - Assurance obligatoire des passagers - Compétence et sanctions pénales en matière d'abordage en mer.

XVIII. OSLO - 1933

Président: Mr. Edvin ALTEN.*Sujets:* Ratification des Conventions de Bruxelles - Compétence civile et pénale en matière d'abordage en mer - Saisie conservatoire de navires - Limitation de la responsabilité des propriétaires de navires.

XIX. PARIS - 1937

Président: Mr. Georges RIPERT.*Sujets:* Ratification des Conventions de Bruxelles - Compétence civile et pénale en matière d'abordage en mer - Saisie conservatoire de navires - Commentaires sur les Conventions de Bruxelles - Assistance et Sauvetage et par avions en mer.

XX. ANVERS - 1947

Président: Mr. Albert LILAR.*Sujets:* Ratification des Conventions de Bruxelles, plus spécialement de la Convention relative à l'immunité des navires d'Etat - Révision de la Convention sur la limitation de la responsabilité des propriétaires de navires et de la Convention sur les connaissements - Examen des trois projets de convention adoptés à la Conférence de Paris de 1936 - Assistance et sauvetage de et par avions en mer - Règles d'York et d'Anvers; taux d'intérêt.

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XXII. NAPLES - 1951

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XXVIII. TOKYO - 1969

President: Mr. Albert LILAR

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XXIX. ANTWERP - 1972

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XXX. HAMBURG - 1974

President: Mr. Albert LILAR

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XXIII. MADRID - 1955*Président:* Mr. Albert LILAR*Sujets:* Limitation de la responsabilité des propriétaires de navires - Responsabilité des transporteurs par mer à l'égard des passagers - Passagers clandestins - Clauses marginales et lettres de garantie.**XXIV. RIJEKA - 1959***Président:* Mr. Albert LILAR*Sujets:* Responsabilité des exploitants de navires nucléaires - Révision de l'article X de la Convention internationale pour l'unification de certaines règles de droit en matière de connaissements - Lettres de garantie et clauses marginales - Révision de l'article XIV de la Convention internationale pour l'unification de certaines règles de droit relatives à l'assistance et au sauvetage en mer - Statut international des navires dans des ports étrangers - Enregistrement des exploitants de navires.**XXV. ATHENES - 1962***Président:* Mr. Albert LILAR*Sujets:* Domages et intérêts en matière d'abordage - Lettres de garantie - Statut international des navires dans des ports étrangers - Enregistrement des navires - Coordination des conventions sur la limitation et les hypothèques - Surestaries et primes de célérité - Responsabilité des transporteurs des bagages.**XXVI. STOCKHOLM - 1963***Président:* Mr. Albert LILAR*Sujets:* Connaissements - Bagages des passagers - Navires en construction.**XXVII. NEW YORK - 1965***Président:* Mr. Albert LILAR*Sujets:* Révision de la Convention sur les Privilèges et Hypothèques maritimes.**XXVIII. TOKYO - 1969***Président:* Mr. Albert LILAR*Sujets:* "Torrey Canyon" - Transport combiné - Coordination des Conventions relatives au transport par mer de passagers et de leurs bagages.**XXIX. ANVERS - 1972***Président:* Mr. Albert LILAR.*Sujets:* Révision des Statuts du Comité Maritime International.**XXX. HAMBOURG - 1974***Président:* Mr. Albert LILAR*Sujets:* Révisions des Règles de York/Anvers 1950 - Limitation de la responsabilité des propriétaires de navires de mer - Les Règles de La Haye.

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XXXIII. LISBON - 1985

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XXXIV. PARIS - 1990

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XXXIV. PARIS - 1990

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Published by CMI Headquarters: c/o Baron Leo Delwaide,
Markgravestraat 9, B-2000 Antwerpen, Belgium

PRINTED IN ITALY
TYPE - 16124 GENOVA, VIA CAFFARO 19
MARCH, 1995