

YEARBOOK

2004

ANNUAIRE

VANCOUVER II



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VANCOUVER II

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PART I

**Organization of
the CMI**

Comité Maritime International

CONSTITUTION

2001¹

PART I - GENERAL

Article 1

Name and Object

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

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

Article 2

Existence and Domicile

The juridical personality of the Comité Maritime International is established under the law of Belgium of 25th October 1919, as later amended. The Comité Maritime International is domiciled in the City of Antwerp, and its administrative office address at the date of adoption of this

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

Comité Maritime International

STATUTS

2001¹

Ière PARTIE - DISPOSITIONS GENERALES

Article 1er

Nom et objet

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

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

Article 2

Existence et siège

Le Comité Maritime International a la personnalité morale selon la loi belge du 25 octobre 1919 telle que modifiée ultérieurement. Le siège du Comité Maritime International est à B-2018 Anvers, Mechelsesteenweg

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

Constitution is Mechelsesteenweg 196, B-2018 Antwerp. Its address may be changed by decision of the Executive Council, and such change shall be published in the *Annexes du Moniteur belge*.

Article 3 **Membership and Liability**

I

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

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

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

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

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

Constitution

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

Article 3

Membres et responsabilité

I

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

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

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

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

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

Part I - Organization of the CMI

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

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

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

II

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

Constitution

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

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

II

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

Part I - Organization of the CMI

or

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

III

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

Constitution

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

III.

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

PART II – ASSEMBLY

Article 4

Composition

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

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

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

Article 5

Meetings and Quorum

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

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

Article 6

Agenda and Voting

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

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

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

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

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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 et quorum

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

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

Article 6

Ordre du jour et votes

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

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

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

Part I - Organization of the CMI

Article 7
Functions

The functions of the Assembly are:

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

PART III – OFFICERS**Article 8**
Designation

The Officers of the Comité Maritime International shall be:

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

Article 9
President

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

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

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

Constitution

Article 7**Fonctions**

Les fonctions de l'Assemblée consistent à:

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

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

Article 9**Le Président**

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

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

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

Part I - Organization of the CMI

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

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

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

Article 11

Secretary-General

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

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

Article 12

Treasurer

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

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

The Treasurer shall submit the financial statements and the proposed

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

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

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

Article 10**Les Vice-Présidents**

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

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

Chacun des Vice-Présidents est élu pour un mandat de 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 d'entretenir des rapports avec d'autres organisations internationales. D'autres missions peuvent lui être confiées par le Conseil exécutif et le Président.

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

Article 12**Le Trésorier**

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

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

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

Part I - Organization of the CMI

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

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

Article 13

Administrator

The functions of the Administrator are:

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

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

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

Article 14

Executive Councillors

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

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

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

Constitution

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

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

Article 13 **L'Administrateur**

Les fonctions de l'Administrateur consistent à:

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

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

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

Article 14 **Les Conseillers exécutifs**

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

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

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

Part I - Organization of the CMI

Article 15
Nominations

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

The Nominating Committee shall consist of:

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

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

On behalf of the Nominating Committee, the chairman shall 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 ninety days before the annual meeting of the Assembly at which nominees are to be elected.

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

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

Article 16
Immediate Past President

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

PART IV – EXECUTIVE COUNCIL**Article 17**
Composition

The Executive Council shall consist of:

- a) The President,
- b) The Vice-Presidents,

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Article 15**Présentations de candidatures**

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

Le Comité de Présentation de candidatures se compose de:

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

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

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 formule alors des propositions.

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

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

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

Article 16**Le Président sortant**

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

4ème PARTIE - CONSEIL EXÉCUTIF**Article 17****Composition**

Le Conseil exécutif est composé:

- a) du Président,
- b) des Vice-Présidents,

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

Article 18**Functions**

The functions of the Executive Council are:

- a) To receive and review reports concerning contact with:
 - (i) The Member Associations,
 - (ii) The CMI Charitable Trust, and
 - (iii) International organizations;
- b) To review documents and/or studies intended for:
 - (i) The Assembly,
 - (ii) The Member Associations, relating to the work of the Comité Maritime International or otherwise advising them of developments, and
 - (iii) International organizations, informing them of the views of the Comité Maritime International on relevant subjects;
- c) To initiate new work within the object of the Comité Maritime International, to establish Standing Committees, International Sub-Committees and Working Groups to undertake such work, to appoint Chairmen, Deputy Chairmen and Rapporteurs for such bodies, and to supervise their work;
- d) To initiate and to appoint persons to carry out by other methods any particular work appropriate to further the object of the Comité Maritime International;
- e) To encourage and facilitate the recruitment of new members of the Comité Maritime International;
- f) To oversee the finances of the Comité Maritime International and to appoint an Audit Committee;
- g) To make interim appointments, if necessary, to the offices of Secretary-General, Treasurer and Administrator;
- h) To nominate, for election by the Assembly, independent auditors of the annual financial statements prepared by the Treasurer and/or the accounts of the Comité Maritime International, and to make interim appointments of such auditors if necessary;
- i) To review and approve proposals for publications of the Comité Maritime International;
- j) To set the dates and places of its own meetings and, subject to Article 5, of the meetings of the Assembly, and of Seminars and Colloquia convened by the Comité Maritime International;
- k) To propose the agenda of meetings of the Assembly and of International Conferences, and to decide its own agenda and those of Seminars and Colloquia convened by the Comité Maritime International;
- l) To carry into effect the decisions of the Assembly;

Constitution

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

Article 18**Fonctions**

Les fonctions du Conseil exécutif sont:

- a) de recevoir et d'examiner des rapports concernant les relations avec:
 - (i) les Associations membres,
 - (ii) le Fonds de Charité du Comité Maritime International ("CMI Charitable Trust"), et
 - (iii) les organisations internationales;
- b) d'examiner les documents et études destinés:
 - (i) à l'Assemblée,
 - (ii) aux Associations membres, concernant l'oeuvre du Comité Maritime International, et en les avisant de tout développement utile,
 - (iii) aux organisations internationales, pour les informer des points de vue du Comité Maritime International sur des sujets adéquats;
- c) d'aborder l'étude de nouveaux travaux entrant dans le domaine du Comité Maritime International, de créer à cette fin des comités permanents, des commissions internationales et des groupes de travail, de désigner les Présidents, les Présidents Adjointes et les Rapporteurs de ces comités, commissions et groupes de travail, et de contrôler leur activité;
- d) d'aborder toute autre étude que ce soit pourvu qu'elle s'inscrive dans la poursuite de l'objet du Comité Maritime International, et de nommer toutes personnes à cette fin;
- e) d'encourager et de favoriser le recrutement de nouveaux Membres du Comité Maritime International;
- f) de contrôler les finances du Comité Maritime International et de nommer un Comité de révision;
- g) en cas de besoin, de pourvoir à titre provisoire à une vacance de la fonction de Secrétaire général, de Trésorier ou d'Administrateur;
- h) de présenter pour élection par l'Assemblée des réviseurs indépendants chargés de réviser les comptes financiers annuels préparés par le Trésorier et/ou les comptes du Comité Maritime International, et, au besoin, de pourvoir à titre provisoire à une vacance de la fonction de réviseur;
- i) d'examiner et d'approuver les propositions de publications du Comité Maritime International;
- j) de fixer les dates et lieux de ses propres réunions et, sous réserve de l'article 5, des réunions de l'Assemblée, ainsi que des séminaires et colloques convoqués par le Comité Maritime International;
- k) de proposer l'ordre du jour des réunions de l'Assemblée et des Conférences Internationales, et de fixer ses propres ordres du jour ainsi que ceux des Séminaires et Colloques convoqués par le Comité Maritime International;
- l) d'exécuter les décisions de l'Assemblée;

Part I - Organization of the CMI

m) To report to the Assembly on the work done and on the initiatives adopted.

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

Article 19

Meetings and Quorum

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

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

PART V – INTERNATIONAL CONFERENCES

Article 20

Composition and Voting

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

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

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

Each Member Association present and entitled to vote shall have one vote in the International Conference; no other Member and no Officer of the Comité Maritime International shall have the right to vote in such capacity.

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

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

Constitution

m) de faire rapport à l'Assemblée sur le travail accompli et sur les initiatives adoptées.

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

Article 19

Réunions et quorum

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

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

5ème PARTIE - CONFÉRENCES INTERNATIONALES

Article 20

Composition et Votes

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

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

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

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

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

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

PART VI – FINANCE AND GOVERNING LAW

Article 21

Arrears of Subscriptions

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

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

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

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

Article 22

Financial Matters and Liability

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

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

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

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

Article 23

Governing Law

Any issue not resolved by reference to this Constitution shall be resolved by reference to Belgian law, including the Act of 25th October 1919, as subsequently amended, granting juridical personality to international

6ème PARTIE - FINANCES

Article 21

Retards dans le paiement de Cotisations

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

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

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

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

Article 22

Questions financières et responsabilités

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

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

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

Le Comité Maritime International ne sera pas responsable des actes ou omissions de ses Membres. La responsabilité du Comité Maritime International est limitée à ses avoirs.

Article 23

Loi applicable

Toute question non résolue par les présents statuts le sera par application du droit belge, notamment par la loi du 25 octobre 1919 accordant la personnalité civile aux associations internationales poursuivant un but philanthropique, religieux, scientifique, artistique ou pédagogique

organizations dedicated to philanthropic, religious, scientific, artistic or pedagogic objects, and to other laws of Belgium as necessary.

PART VII – ENTRY INTO FORCE AND DISSOLUTION

Article 24

Entry into Force ⁽²⁾

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

Article 25

Dissolution and Procedure for Liquidation

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

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

Constitution

(Moniteur belge 5 novembre 1919) telle que modifiée ou complétée ultérieurement et, au besoin, par d'autres dispositions de droit belge.

7ème PARTIE - ENTREE EN VIGUEUR ET DISSOLUTION

Article 24

Entrée en vigueur ⁽²⁾

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

Article 25

Procédure de dissolution et de liquidation

L'Assemblée peut, sur requête adressée à l'Administrateur au plus tard cent quatre vingt jours avant une réunion ordinaire ou extraordinaire, voter la dissolution du Comité Maritime International. La dissolution requiert un quorum de présences d'au moins la moitié des Associations Membres en droit de voter et une majorité de trois quarts de votes des Associations Membres présentes, en droit de voter, et votant. En cas de vote en faveur d'une dissolution, la liquidation aura lieu conformément au droit belge. Après l'apurement de toutes les dettes et le paiement de toute dépense raisonnable relative à la liquidation, le solde des avoirs du Comité Maritime International, s'il y en a, reviendront au Fonds de Charité du Comité Maritime International ("CMI Charitable Trust"), une personne morale selon le droit du Royaume Uni.²

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

RULES OF PROCEDURE*

1996¹

Rule 1

Right of Presence

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

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

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

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

Rule 2

Right of Voice

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

Rule 3

Points of Order

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

1. Adopted in Brussels, 13th April 1996.

Rules of Procedure

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

Rule 4

Voting

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

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

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

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

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

Rule 5

Amendments to Proposals

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

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

Rule 6

Secretary and Minutes

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

Part I - Organization of the CMI

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

Rule 7

Amendment of these Rules

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

Rule 8

Application and Prevailing Authority

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

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

GUIDELINES FOR PROPOSING THE ELECTION OF TITULARY AND PROVISIONAL MEMBERS

1999¹

Titulary Members

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

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

Provisional Members

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

Periodic Review

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

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

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¹ Born 1945 in Lille, France. Studied law in Lille and Paris. Lecturer at the Universities of Rheims and Paris 1969 – 1978. Admitted to Paris Bar in 1972, when he became an associate to Jacques Villeneuve. Partner and founder-member of the present law firm Villeneuve Rohart Simon, & Associés since 1978. Chairman of Committee A (Maritime and Transport Law) of the International Bar Association 1992 – 1995. Treasurer (1989 – 1997) and subsequently President (1997 – 2002) of the Association Française du Droit Maritime. Titulary Member, Executive Councillor (1994 – 2002), and subsequently elected President of the Comité Maritime International (June 2004).

² Joined the leading London based Maritime law firm of Ince & Co. in June 1958 and became a Partner in 1966. He was Senior Partner from January 1989 to May 1995 and remains a Consultant with the firm. In addition to being President of the Comité Maritime International he is also Secretary/Treasurer of the British Maritime Law Association (BMLA). He is a regular speaker at seminars and conferences on various aspects of maritime law and co-author of “Limitation of Liability for Maritime Claims” (3rd Ed. 1998). He has contributed numerous articles to legal publications. He is a member of the Board of Governors of IMLI, a member of the Editorial Board of the Lloyd’s Maritime and Commercial Law Quarterly and member of the Advisory Board of the Admiralty Law Institute, Tulane University.

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³ Born 1944 in Västerås, Sweden. 1971: Bachelor of law, University of Uppsala, Sweden. 1971-1972: Lecturer, School of Economics, Gothenburg, Sweden. 1972: Associate, Mannheimer & Zetterlöf, Gothenburg, Sweden. 1973-1976: Legal officer, United Nations Commission on International Trade Law, United Nations Conference on Trade and Development, Geneva, Switzerland. 1977-1981: Research fellow, Scandinavian Institute of Maritime Law, Oslo, Norway. 1982: Attorney at law, Northern Shipowners Defence Club, Oslo, Norway. 1993-2000: President, Norwegian Maritime Law Association, Oslo, Norway. 1994: Executive Councillor, Comité Maritime International, Antwerp, Belgium. 1996: Chairman of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and related subjects. 1998: Mediation Workshop, arranged by Professor Frank E.A. Sander, Harvard Law School. 1999: President of the Main Committee of the Diplomatic Conference on Arrest of Ships. 2000: Deputy Managing Director, Northern Shipowners Defence Club. 2001: Vice President, Comité Maritime International, Antwerp. Delegate of Norway to several IMO, UNCTAD and UNCITRAL meetings. Participated in the drafting of several BIMCO documents, such as BARECON 2001.

⁴ Licensed Master (Near Coastal) of Steam & Motor Vessels since 1960. B.A., Colby College, 1962. Juris Doctor, Cornell University, 1965; research assistant to Prof. G. H. Robinson (Robinson on Admiralty). Ph.D. in the Faculty of Law and Yorke Prizeman of the University of Cambridge (Clare College), 1967. Practice with Burlingham Underwood, New York, 1967-72. Author of *Development of Admiralty Jurisdiction and Practice* (Cambridge U. P.), elected Fellow of the Royal Historical Society, 1970. Maritime Legal Adviser, International Bank, Washington, DC (seconded to Liberian maritime administration), 1973-85. Sometime Professor of Law at Cornell, Virginia, Tulane and World Maritime Universities. Vice-Chairman (1974-79) and Chairman (1980-84), IMO Legal Committee. Professor and Governor, IMO International Maritime Law Institute since 1991. Editor-in-Chief, *International Maritime Law* (7 Vols), Benedict on Admiralty since 1992. Member of MLAUS since 1964. CMI Titulary Member (1980), Executive Councillor (1989), Vice-President (1997). [Chairman of the CMI Working Group on Classification Societies; Chairman of the Joint International Working Group on Piracy and Maritime Violence; Past Chairman of the Joint International Working Group on General Average.]

⁵ Nigel H. Frawley was educated at the Royal Military College in Kingston, Ontario, Canada and the Royal Naval College in Greenwich, England. He served for a number of years in the Royal Canadian Navy and the Royal Navy in several warships and submarines. He commanded a submarine and a minelayer. He then resigned his commission as a Lieutenant Commander and attended Law School at the University of Toronto from 1969 to 1972. He has practised marine and aviation law since that time in Toronto. He has written a number of papers and lectured extensively. He was Chairman of the Maritime Law Section of the Canadian Bar Association from 1993 to 1995 and President of the Canadian Maritime Law Association from 1996 to 1998.

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⁶ Wim Fransen was born on 26th July 1949. He became a Master of law at the University of Louvain in 1972. During his apprenticeship with the Brussels firms, Botson et Associés and Goffin & Tacquet, he obtained a 'licence en droit maritime et aérien' at the Université Libre de Bruxelles. He started his own office as a maritime lawyer in Antwerp in 1979 and since then works almost exclusively on behalf of Owners, Carriers and P&I Clubs. He is the senior partner of Fransen Advocaten. He is often appointed as an Arbitrator in maritime and insurance disputes. Wim Fransen speaks Dutch, French, English, German and Spanish and reads Italian. Since 1998 he is the President of the Belgian Maritime Law Association. He became Administrator of the CMI in June 2002.

⁷ Candidate in law, Louvain, 1984. Licentiate in law, Louvain, 1987. LL. M. In Admiralty, Tulane, 1989. Diploma Maritime and Transport law, Antwerp, 1990. Member of the Antwerp bar since 1987. Professor of maritime law, University of Louvain (UCL). Professor of Marine insurance, University of Limbourg (LUC). Member of the board of directors and of the board of editors of the Antwerp Maritime Law Reports. Member of the board of the Belgian Maritime Law Association (2002-2003). Publications in the field of maritime law in Dutch, French and English.

⁸ Lawyer with practice in Madrid since 1973, LL.B. from the University of Madrid School of Law. Maritime Arbitrator. President of the Spanish Maritime Law Association. Executive Councillor of the Comité Maritime International (CMI) and of Association Internationale de Dispatcheurs Européens (AIDE), Vicepresident of the Spanish Maritime Arbitration Association-IMARCO. Ex Vicepresident of the Iberoamerican Institute of Maritime Law, Member of the International Bar Association (IBA), Member of the Board of the Spanish Committee of the International Chamber of Commerce. Professor of Maritime Law and Lecturer at numerous Conferences over the world since 1972.

⁹ Independent practice specialized in Maritime & Insurance Law, Average and Loss Adjustment. Until year 2000, a partner of Anseta, Cornejo & Guzmán, Law Firm established in 1900 in the same

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speciality. Has lectured on Maritime and Insurance Law at the Catholic University of Chile and at the University of Chile, Valparaíso. Titulary Member of the Comité Maritime International. Vice President of the Chilean Maritime Law Association. Vice President for Chile of the Iberic American Institute of Maritime Law. Past President of the Association of Loss Adjusters of Chile. Arbitrator at the Mediation and Arbitration Centers of the Chambers of Commerce of Santiago and Valparaíso. Arbitrator at the Chilean Branch of AIDA (Association Internationale de Droit d'assurance). Co-author of the Maritime and Marine Insurance Legislation at present in force as part of the Commercial Code. Member of the Commission for the modification of Insurance Law. Participated in drafting the law applicable to loss adjusting.

¹⁰ Academic: Professor of Shipping Law and Head of the Department of Commercial Law at the Faculty of Law of the University of Cape Town; BComm, LLB and LLD degrees from the University of Cape Town, and LLM from UCL, London. Diploma in Science & Technology of Navigation (Sir John Cass College, London); Co-founder of shipping law LLM programme at UCT in 1982, full-time academic since 1992. Convenes and teaches Admiralty, Maritime Law, Marine Insurance and Carriage of goods to international class of 20 students per course per annum. Supervisor of LLM and doctoral theses, mainly in the field of shipping law; Published work includes Shipping Law & Admiralty Jurisdiction in South Africa (Juta, 1999); Maintains shipping law information website at www.uctshiplaw.com

Practice: Admitted as a practising attorney at law and notary public of the High Court of South Africa in 1974. Erstwhile partner of Fairbridge Arderne & Lawton (1977 to 1991). Currently partner of Shepstone & Wylie (1999 -)

Professional extension: Member of the South African Maritime Law Association since its inception in 1974. Past Executive Councillor and President of the MLA. Served on SA Transport Advisory Committee 1990 –1994 Chair of Maritime Transport Policy Review Group appointed by the SA government in 1994 to advise transport policy reform. Co-draftsman of Green Paper and White Paper on maritime transport. Frequent court appointed referee in admiralty, and arbitrator of maritime disputes.

Business: Founder (1993) and Chairman of Telepassport (Pty) Ltd, SA based telecommunications company. Numerous trustee and board appointments.

Personal: Married to artist wife Caerli, and father of two sons, Vincent (15) and Rupert (13).

CMI work, past present and future: Executive Councillor of the CMI from 1999. Chairs Marine Insurance portfolio. Participation and presentation of papers at conferences dealing with Marine Insurance reform initiative - Oslo, Antwerp, Toledo and Singapore. Serves on conference organising committee. During current term of office, attended all Council meetings bar two during 2002 when he was granted leave of absence owing to family ill-health. Committed to guiding the CMI's Marine Insurance initiative to a conclusion to be presented at the Vancouver conference in May/June 2004.

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PART II

The Work of the CMI

VANCOUVER II

I

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AGENDA PAPER

Introduction

The purpose of this Agenda Paper is to set out a suggested framework for the discussions in the sessions on Transport Law. In the limited time available it will not be possible to consider the whole of the current draft of the Draft Instrument (A/CN.9/WG III/WP. 32 (“WP 32”). It is proposed that the discussions should concentrate on the topics set out in this Paper, which are important and on which UNCITRAL Working Group III has not yet reached firm conclusions.

The first selected topic, the basis of the carrier’s liability set out in Article 14, was discussed in detail by the Working Group at its twelfth session in Vienna in October 2003. It was then agreed that it would not be discussed again before the fourteenth session in Vienna in October 2004 in order to allow a period for consultation. The discussion of this topic will thus form part of this consultation process.

It is possible that some or all of the other selected topics will be the subject of discussion at the thirteenth session in New York in May 2004. A report of this session will be posted on the CMI website (www.comitemaritime.org) in the week beginning 17 May 2004. It is possible that some changes to the selected topics may be proposed in the light of the debate at this session.

This Paper should be read in conjunction with the Background Papers which are being written by Prof. Francesco Berlingieri, Karl-Johan Gombrii, Prof. Allan Philip and Prof. Gertjan van der Ziel on topics 1, 2, 3 and 4 respectively.

I Basis of the carrier’s liability – Article 14

WP 32 contains three variants of Article 14, A, B and C, of which variant A is based on Article 6.1 of the Draft Instrument submitted to UNCITRAL by the CMI (“the CMI Draft”). It was agreed at the twelfth session in Vienna in October 2003, that the text of Article 14 set out in the Annex to this paper should be the basis upon which to continue further work¹, and that the text of Articles 13 and 22 should be revised.

¹ The provisional revised versions of Articles 1 (a), (e), (f) and (g), 2, 13, 14 and 15, which have been prepared by the UNCITRAL Secretariat on the basis of what was agreed in Vienna in October 2003, with explanatory footnotes, are set out in A.CN.9/WGIII/WP.36. This document accordingly updates the text of these Articles in WP 32.

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The text set out in the Annex accordingly supersedes the text of Articles 13 and 14 in WP 32 and is the text on which the Committee should base its discussions.

There was overwhelming support at the Singapore Conference in 2001² for the basis of the carrier's liability being fault based and there was support for a detailed list of the relevant provisions. The text of Article 14 set out in the Annex broadly accords with the majority views on these issues of principle as expressed in Singapore.

It is therefore suggested that the Committee should focus its discussion of Article 14 on the following questions:

- 1 *Whether the framework for the allocation of the burden of proof as between the carrier and the claimant as set out in Article 14 is in principle satisfactory.*³
- 2 *Whether the carrier should be unable to rely on an exception in Article 14.2 if/to the extent that the claimant establishes the matters set out in 14.2 (i) or (ii).*
- 3 *Whether the carrier's obligations set out in Article 13.1 should be overriding in the sense that the carrier should be unable to rely on an exception in Articles 14.2, 22 or 23 if the claimant establishes a breach by the carrier of its obligations under Article 13.1.*
- 4 *Whether the relationship between the burden of proof imposed on the claimant by Articles 14.2 and 14.3 is satisfactory.*
- 5 *Whether the burden or proof imposed on the claimant by Article 14.3 should mean that the claimant has to prove*
 - *the existence of the circumstances set out in sub-paragraphs (i), (ii) or (iii) of Article 14.3*
 - *some sort of nexus between the circumstances and the loss, damage or delay*
 - *that the circumstances set out in sub-paragraphs (i), (ii) or (iii) caused the loss, damage or delay*
- 6 *Whether Article 14.4 should make provision for both concurring and competing causes.*⁴
- 7 *Whether the fire exception, currently contained in Article 22, should be retained*
 - *if so, whether the carrier should be liable for the fault or neglect of its servants or agents, and*
 - *whether the burden of proof should be on the carrier or the claimant.*

² See the report of Committee A published in CMI Yearbook 2001 Singapore II at pp 182-187

³ It is noted in paragraph 127 of A/CN.9/544 (the report of the twelfth session in Vienna in October 2003) that the impact of the decision to delete the navigational error exception should be considered with respect to burdens of proof.

⁴ See the discussion reported in paragraph 142 of A/CN.9/544

II Right of control – Chapter 11

Working Group III has found the majority of the provisions in the CMI Draft to be generally acceptable, but the Secretariat was requested to recast Article 11.3(a) of this Draft⁵. Consequently WP 32 contains two Variants of Article 55.1; Variant A substantially corresponds with Article 11.3(a) of the CMI Draft, whilst Variant B sets out the circumstances in which the carrier should follow the instructions received from the controlling party, and then the consequences of execution, or non-execution, of such instructions.

It is suggested that in particular the following questions should be discussed:

- 1 *Do the conditions precedent to the carrier being obliged to execute the instructions from the controlling party in (a), (b) and (c) of Variant B of Article 55.1*
 - *sufficiently protect the carrier;*
 - *unduly dilute the rights of the controlling party?*
- 2 *Are the revised provisions in Article 55.2 satisfactory?*
- 3 *Does article 55.4, which is a new provision imposing unlimited liability on the carrier for breach of Article 55.1 in failing to comply with the controlling party's instructions, impose too heavy a liability on the carrier?*

III Jurisdiction and arbitration – Chapters 15 and 16

The CMI Draft did not contain any provisions dealing with jurisdiction or arbitration. The CMI International Sub Committee on the Uniformity of the Carriage of Goods by Sea (“the Uniformity Sub-Committee”), which considered draft uniform rules in 1995-96, considered that such uniform rules should contain a provision on jurisdiction along the lines of article 21 of the Hamburg Rules, excluding the provisions of article 21 which were in conflict with article 7(1) of the 1952 Arrest Convention, and a majority was in favour of a provision along the lines of article 22 of the Hamburg Rules, but with the omission of sub-paragraph (3).⁶

At the eleventh session of Working Group III the widely prevailing view was that provisions on jurisdiction and arbitration should be introduced into the Draft Instrument and strong support was expressed for modelling them on articles 21 and 22 of the Hamburg Rules. The UNCITRAL Secretariat has accordingly included chapters 15 and 16 in WP 32. Variant A of both chapters reproduces articles 21 and 22 of the Hamburg Rules.⁷ Variant B omits the

⁵ See the discussion reported in paragraphs 114-117 of A/CN.9/526

⁶ The report of the Chairman on the work of the Uniformity Sub Committee is published in Yearbook 1999 at pp 105-116

⁷ Articles 72(c) and 78(a)iii refer to the place of receipt and the place of delivery, as opposed to the port of loading or the port of discharge and the last sentence of article 21.2(c) of the Hamburg Rules has been omitted.

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provisions, as referred to above, which the Uniformity Sub Committee considered should be omitted.

It is suggested that the Committee should focus its discussion on the following questions:

Jurisdiction

- 1 *Should the Instrument contain jurisdiction rules, or should the question of jurisdiction be left to national law?*
- 2 *May the parties choose one or more fora as alternatives or to the exclusion of the otherwise competent fora?*
- 3 *Is it a condition for going to a forum that it is situated in a convention country?*
- 4 *Should the Instrument contain lis pendens rules and/or rules on recognition and enforcement of judgments?*
- 5 *What is the effect of the jurisdiction rules, if there are assets of the losing party in a country that does not have jurisdiction (because of the jurisdiction rules of the Instrument or because the country is not a party to the Instrument) and does not enforce the judgment, either because it is not a party to the Instrument or the Instrument does not contain enforcement rules, and the country where the assets are situated does not enforce the judgment under some other convention or its own law?*

Arbitration

- 1 *Should the Instrument contain arbitration rules, or should the question of arbitration be left to national law?*
- 2 *Should the Instrument regulate the seat of arbitration or only the applicable law?*
 - *If the Instrument should regulate the seat of arbitration, may the parties choose an exclusive seat among the permissible seats?*
 - *Must the seat be situated in a Convention country?*
- 3 *Should the Instrument regulate the form of an arbitration agreement or could that be left to the applicable law?*

IV Delivery to the consignee – Chapter 10

Chapter 10 (Articles 46 to 50) contains material that does not appear in other transport conventions. The intention behind the CMI Draft, which has not been radically amended in WP 32, was to address more precisely the end of the carrier's period of responsibility as defined in Article 7 (Article 11.2 may also be relevant) and to deal with two pressing problems which often arise in practice. The first problem arises when the consignee does not claim the goods. The second arises when a negotiable transport document is issued and the document is not available to be surrendered to the carrier.

In drafting these provisions an attempt was made to strike a fair balance between the interests of the carrier and the consignee and to restore the integrity of the bill of lading system rather than to undermine it.

The following questions are suggested for discussion:

- 1 *Should the consignee's obligation in Article 46 to accept delivery of the goods after arrival at their destination be unconditional, or conditional on the consignee exercising rights under the contract of carriage?*
- 2 *When no negotiable transport document has been issued, what should be the relationship between the carrier's obligation to deliver the goods and the consignee's obligation to produce proper identification (Article 48)?*
- 3 *Do the provisions of Article 49 strike a fair balance?*

V Transport documents – Chapter 8

WP 32 makes few changes to the provisions in chapter 8 as contained in the CMI Draft, most of which were found to be generally acceptable on first reading. Alterations have however been made to Articles 34 and 37 and there are two variants of Article 39 (b((ii)).

It is suggested that the Committee should focus its discussion on the following questions:

- 1 *Do the additional words "as furnished by the shipper before the carrier or a performing party receives the goods" in Article 34.1(c)(i) impose an unreasonable burden on the shipper?*
- 2 *Are the provisions of Article 37, which permit the carrier to qualify the information furnished by the shipper in respect of goods delivered in a closed container (unless the carrier in fact inspects the goods or has actual knowledge of the contents) before issuing the transport document "provided ... that in such case ... it reasonably considers the information furnished by the shipper regarding the contents of the container to be inaccurate", satisfactory?*
 - *should the carrier be required to give reasons for such qualification?*
 - *should the Draft Instrument provide for the situation where the carrier refrains from qualifying the information against a guarantee from the shipper?*
- 3 *Should Variant B of paragraph (b((ii) of Article 39, which provides that a transport document or electronic record which evidences receipt of the goods is conclusive evidence of the carrier's receipt of the goods described in the contract particulars, be included in the Draft Instrument (in place of the original text in Variant A)?*

⁸ See the discussion reported in paragraphs 35-41 of A/CN.9/526 (the report of the eleventh session)

VI Rights of suit – chapter 13

At the eleventh session of Working Group III strong support was expressed for the deletion of Article 63 which sets out by which parties rights under the contract of carriage may be asserted against the carrier or a performing party. It was felt to be superfluous and could be regarded as unduly restrictive. The Secretariat was asked to prepare alternative wording in the form of a general statement recognising the right of any person with a legitimate interest in the contract to exercise a right of suit where that person had suffered loss or damage.⁹

The following questions arise:

- 1 *Should Article 63 be retained in substantially its original form (Variant A) or should it be deleted and rights of suit be left to national law?*
- 2 *If it should be deleted, should the general statement in Variant B of Article 63 be included?*

ANNEX

Article 13. Additional obligations applicable to the voyage by sea.

- 1 *The carrier shall be bound, before, at the beginning of, and during the voyage by sea, to exercise due diligence to:*
 - “(a) Make and keep the ship seaworthy;*
 - (b) Properly man, equip and supply the ship and keep the ship so manned, equipped and supplied throughout the voyage;*
 - (c) Make and keep the holds and all other parts of the ship in which the goods are carried, including containers where supplied by the carrier, in or upon which the goods are carried fit and safe for their reception, carriage and preservation.*
- 2 *[Notwithstanding articles 10, 11 and 13(1), the carrier may sacrifice goods when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril, life or other property involved in the common adventure.]*

Article 14. Basis of liability

- 1 *The carrier shall be liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the [claimant] proves that*
 - (a) The loss, damage, or delay; or*
 - (b) The occurrence that caused [or contributed to] the loss, damage, or delay*

⁹ See the discussion reported in paragraphs 150-157 of A/CN.9/526

took place during the period of the carrier's responsibility as defined in chapter 3, unless [and to the extent] the carrier proves that neither its fault nor the fault of any person mentioned in article 14 bis¹⁰ caused [or contributed to] the loss, damage or delay.

- 2 Without prejudice to paragraph 3 if [and to the extent] the carrier, alternatively to proving the absence of fault as provided in paragraph 1 proves that the loss, damage or delay was caused by one of the following events:
- (a) [Act of God], war, hostilities, armed conflict, piracy, terrorism, riots and civil commotions;
 - (b) Quarantine restrictions; interferences by or impediments created by governments, public authorities, rulers or people [including interference by or pursuant to legal process];
 - (c) Act or omission of the shipper, the controlling party or the consignee;
 - (d) Strikes, lockouts, stoppages or restraints of labour;
 - (e) Wastage in bulk or weight or any other loss or damage arising from inherent quality, defect, or vice of the goods;
 - (f) Insufficiency or defective condition of packing or marking;
 - (g) Latent defects in the ship not discoverable by due diligence;
 - (h) Handling, loading, stowage or unloading of the goods by or on behalf of the shipper, the controlling party or the consignee;
 - (i) Acts of the carrier or a performing party in pursuance of the powers conferred by articles 12 and 13(2) when the goods have become a danger to persons, property or the environment or have been sacrificed;
 - (j) Any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or servants of the carrier, but the burden of proof to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

Then the carrier shall be liable for such loss, damage or delay if [and to the extent] the claimant proves that:

- (i) The fault of the carrier or of a person mentioned in article 14 bis caused [or contributed to] the event on which the carrier relies under this paragraph; or
- (ii) An event other than those listed in this paragraph contributed to the loss, damage or delay. In this case, liability is to be determined in accordance with paragraph 1.

¹⁰ This is a reference to Article 15(3) of WP 32 which the Working Group agreed should become a separate article provisionally numbered 14 bis. See paragraph 167 of A/CN.9/544 (the report of the twelfth session in Vienna in October 2003) and the discussion of Article 15(3) summarised in paragraphs 166-170.

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- 3 *To the extent that the [claimant] proves [that there was][that the loss, damage, or delay was caused by] [that the loss, damage or delay could have been caused by],*
- (i) The unseaworthiness of the ship;*
 - (ii) The improper manning, equipping, and supplying of the ship; or*
 - (iii) The fact that the holds or other parts of the ship in which the goods are carried (including containers, when supplied by the carrier; in or upon which the goods are carried) were not fit and safe for the reception, carriage, and preservation of the goods,*
- then the carrier shall be liable under paragraph 1 unless it proves that, It complied with its obligation to exercise due diligence as required under article 13(1). [; or*
- (a) It complied with its obligation to exercise due diligence as required under article 13(1). [; or*
 - (b) The loss, damage or delay was not caused by any of the circumstances mentioned in (i), (ii) and (iii) above.]*
- 4 *In case the fault of the carrier or of a person mentioned in article 14 bis has contributed to the loss, damage or delay together with concurring causes for which the carrier shall not be liable, the amount for which the carrier shall be liable, without prejudice to its right to limit liability as provided by article 18, shall be determined [by the court] in proportion to the extent to which the loss, damage or delay is attributable to its fault. [The court may only apportion liability on an equal basis if it is unable to determine the actual apportionment or if it determines that the actual apportionment is on an equal basis.]*

*Article 22. Liability of the carrier**[.....]**“fire on the ship, unless caused by the fault or privity of the carrier.”¹¹*

¹¹ The Working Group agreed to leave the exceptions relating to carriage by sea set out in Articles 22 and 23 separate from those to be listed in Article 14 pending consideration in the future of where best to place them in the Instrument, but there was agreement that navigational fault should not be reinstated in the list.

BACKGROUND PAPER ON BASIS OF THE CARRIER'S LIABILITY

FRANCESCO BERLINGIERI

Introduction

The title of this topic is taken from that of article 14 of the Draft Instrument, which is the first article of Chapter 5, where the provisions on the liability of the carrier are contained. However it is thought that article 14, which goes far beyond merely setting out the basis of the carrier's liability, should be considered in conjunction with article 13 which sets out the obligations of the carrier. The breach of any of such obligations that causes loss of or damage to the cargo or delay in delivery in fact gives rise to the liability of the carrier. Whether and to which extent there should be a linkage between article 13 and article 14 is, therefore, a problem that needs to be considered and has been considered during the twelfth session in Vienna in connection with paragraph 3 of article 14.

This is the reason why also article 13 is reproduced in the Agenda Paper.

The reason why article 13, which is based on article 3 rule 1 of the Hague-Visby Rules, is entitled "Additional obligations applicable to the voyage by sea and certain excepted perils" and why certain excepted perils (i.e. fire, perils of the sea, saving or attempting to save life or property), have been mentioned separately is that it was considered advisable to set out first the provisions applicable throughout the door-to-door carriage, whether by sea or by other modes, and then to set out separately those applicable only to the carriage by sea.

The texts that are quoted in the Agenda Paper are those prepared by the Secretariat after the Vienna session of the Working Group held in October 2003 and are contained in WP.36.

The history of article 14

For a better understanding of the text that has resulted from the last session of the Working Group it may be convenient to trace the history of each of the four paragraphs of such text.

Paragraph 1 – The basis of liability

The basis of liability is set out in this paragraph and such basis is fault. In the Agenda Paper for the CMI Singapore Conference¹ it was

¹ CMI Yearbook 2000-Singapore I, p. 116.

suggested that consideration should be given to the question whether liability should be based on fault, such as in the Hague-Visby Rules and in the Hamburg Rules or should be more stringent, such as in the CMR. Accordingly alternative texts were included in the Draft Outline Instrument submitted to the Conference².

At the Conference there was overwhelming support for a fault-based regime. Most delegates favoured a regime based on the Hague-Visby Rules, while there was some support for a regime on the lines of article 5(1) of the Hamburg Rules.

In the revised Draft Outline Instrument prepared by the Working Group after the Conference there were three alternative texts, the first two of them based respectively on the Hague-Visby Rules and the Hamburg Rules³ and the third based on the Hague-Visby Rules but with an additional provision relating to the evidence that the carrier should provide in order to prove absence of fault⁴. It is worth noting that this latter alternative created a link with the preceding provision on the obligations of the carrier⁵.

Such Draft Outline Instrument, accompanied by a Consultation Paper, was circulated by the Chairman of the I-SC and comments were requested on a number of issues⁶. From the responses a clear preference for the first alternative – Alternative I(a) – emerged and, therefore, article 6.1.1 of the CMI Draft Instrument of Transport Law submitted to UNCITRAL (subsequently numbered article 14.1) so provided:

The carrier shall be liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the occurrence that caused the loss, damage or delay took place during the period of the carrier's responsibility as defined in article 4, unless the carrier proves that neither its fault nor that of any person referred to in article 6.3.2(a) caused or contributed to the loss, damage or delay.

At the session of the UNCITRAL Working Group held in Vienna in October 2002 strong support was expressed for sub-paragraph 6.1.1. Since, however several, and sometimes conflicting, points were raised, the Secretariat was requested to prepare a revised draft in which due consideration should be given to the views expressed⁷. These views were again considered, and debated, during the meeting of the expert group held in Vienna in July 2003, and then the Secretariat prepared in WP.32 the three Variants that were subsequently considered at the subsequent session of the

² CMI Yearbook 2000-Singapore I, p. 131 and 132.

³ CMI Yearbook 2001-Singapore II, p. 162, Alternatives I(a) and I(b).

⁴ Alternative II.

⁵ The obligations of the carrier were set out in article 5 of the Draft Outline Instrument. Article 5.2 reproduced article 3 rule 1 of the Hague-Visby Rules except that the obligation to exercise due diligence was made a continuous obligation.

⁶ A Synopsis of the responses is published in CMI Yearbook 2001-Singapore II at pages 384-531. The responses on the issue relating to the basis of the carrier's liability are at pages 432-457.

⁷ A/CN.9/525, paragraphs 30-34.

Working Group held in Vienna in October 2003. Variant A reproduced without any change the text of article 6.1.1 of the CMI Draft; Variant C differed only in that the contents of article 6.1.1 were splitted into two separate paragraphs.

Strong support was again expressed by the Working Group that the nature of the liability should be based on presumed fault and for Variant A⁸. After a general discussion on the whole of the text of article 14 an informal drafting group composed of a number of delegations prepared a redraft of article 14 and, after further discussion, a second redraft.

The first redraft changed significantly the layout of article 14 and of its paragraph 1 in that it regulated more completely the allocation of the burden of proof between the parties by expressly providing in a first paragraph what the claimant must prove in order to successfully hold the carrier liable and then by providing in a second paragraph the alternative defences of the carrier, consisting in the proof of absence of fault or of the loss, damage or delay having been caused by an excepted peril. It also adopted, albeit in square brackets, the linkage with article 13 suggested in Alternative B of paragraph 1.

The second redraft instead merged paragraph 1 of the first redraft with paragraph 1 of Alternative A and moved the provision on the excepted perils to a separate paragraph. The text of article 6.1.1 of the CMI Draft is therefore substantially preserved, but is completed by the (previously implied) rule that the claimant must first prove the loss, damage or delay and that such loss, damage or delay occurred during the period of the carrier's responsibility.

Although there was general agreement that no firm decision could be made before further consideration and consultations had taken place, strong support was expressed in the Working Group for the overall approach taken and the principles reflected in paragraph 1 and, therefore, this paragraph has now been reproduced in WP.36 without any change, except that the word "shipper", that appeared in square brackets in the second redraft, has been replaced by "claimant", always in square brackets.

*Paragraph 2 – The "excepted perils"*⁹

During the Singapore Conference the issue was considered of whether it would have been convenient to maintain the drafting technique of the Hague-Visby Rules, or to adopt only a provision of a general nature, as in the Hamburg Rules and there was support for the first alternative¹⁰.

⁸ A/CN.9/544, paragraphs 90 and 91.

⁹ The term used is sometime "excepted perils", some other times "exceptions", "exemptions", "exonerations", "presumptions of absence of fault". It is obvious that the propriety of the term depends on the legal effect of the defence. If the effect is not an exoneration of the carrier from liability; if the claimant may still prove that the fault of the carrier caused or contributed to the loss, damage or delay, the terms "exemptions" and "exonerations" would be improper. Quite rightly in the commentary (at p. 554) accompanying the draft the word "exceptions" was used.

¹⁰ Report of Committee A to the Plenary, CMI Yearbook 2001-Singapore II, p. 192, 184.

In the Draft Outline Instrument of 31 May 2001 a list of “excepted perils” was included in square brackets and such “excepted perils” were drafted as presumptions¹¹. In the Consultation Paper comments were requested on “Whether the exemptions should be drafted as presumptions of absence of fault ... or whether some, or all, of them should be drafted as exceptions¹² which would exonerate the carrier from liability”. On the basis of the responses received the presumption approach was adopted in article 6.1.3 of the CMI Draft Instrument¹³.

During the Vienna session of the Working Group in October 2002, the need for a detailed list of “excepted perils” was again discussed but the prevailing view, however, was that, although it might be superfluous in certain legal systems, such list should be retained in view of the useful role it would play in many legal systems in preserving the existing body of case law¹⁴. Conflicting views were instead expressed as to whether the “excepted perils” should be retained as exonerations from liability or whether they should appear as presumptions only. In the context of that discussion, it was pointed out that the difference might be very limited in practice since the exonerations would be subject to proof being given of the carrier’s fault¹⁵.

This latter remark gave rise to the two alternatives appearing in square brackets in Variant A of article 14.2 in WP.32¹⁶.

Variant B adopted the second of such alternatives but its wording differed in that the exemption appeared in the opening sentence, while the proof of the fault of the carrier was moved at the end of the list of the excepted perils. In addition, as previously mentioned, it contained a link with the obligations set out in article 13.

Finally, Variant C did not differ in substance from Variant B.

At the subsequent session of the Working Group held in Vienna in October 2003 the problem of whether the “excepted perils” should be qualified as presumptions or exonerations was again the object of differing views¹⁷. In the first redraft prepared by the informal drafting group the “excepted perils” were treated as exonerations and since this solution gave rise to objections, in the second redraft the two alternatives (exonerations and presumptions) were again mentioned.

An attempt was subsequently made by one delegation to bridge this

¹¹ CMI Yearbook 2001-Singapore II, p. 362 and 363. The list did not include the exemptions for fault in the navigation and maintenance of the ship.

¹² CMI Yearbook 2001-Singapore II, p. 380.

¹³ CMI Yearbook 2001-Singapore II, p. 553-556.

¹⁴ A/CN.9/525, paragraph 39.

¹⁵ A/CN.9/525, paragraph 41.

¹⁶ Such alternatives being:

- “it shall be presumed, in the absence of proof to the contrary, that neither its fault nor that of a performing party has caused [or contributed to cause] that loss, damage or delay”, and
- “the carrier shall not be liable, except where proof is given of its fault or of the fault of a performing party, for such loss, damage or delay”.

¹⁷ A/CN.9/544, paragraph 90.

difference of opinions by avoiding to qualify the excepted perils one way or another and describing instead the allocation of the burden of proof in the various subsequent stages¹⁸. The gist of this proposal, which met with a very wide support, only subject to some drafting amendments¹⁹, was that if the carrier proves that the loss, damage or delay was caused by one of the excepted perils, its liability would arise only if the claimant proves either that the fault of the carrier caused or contributed to the event on which the carrier relies or that an event other than that on which carrier relies contributed to the loss, damage or delay.

At that time the individual “excepted perils” had not been discussed yet and, therefore, in all redrafts of this paragraph they were left in blank. They were discussed subsequently and support was again expressed for the general view that the list taken from the Hague-Visby Rules should be followed closely except for the deletion of faults in the navigation and management of the ship. The list contained in Variants A, B and C of article 14 in WP.32 has therefore been reproduced in WP.36 and also in the Agenda Paper. However in WP.36, it is thought unintentionally, the list ends with the so called “catch all” exception of article 4 rule 2(q) of the Hague-Visby Rules, which now has become the basic rule in respect of the liability of the carrier and has been moved to paragraph 1 of article 14.

As previously indicated, the excepted perils of a pure maritime character included in article 4(2) of the Hague and Hague-Visby Rules were not listed in article 14(2) but in article 22 which is part of Chapter 6 entitled “Additional provisions relating to carriage by sea [or by other navigable waters]”. Those listed in Variant B of article 22, which is more complete, are the following:

- (a) saving or attempting to save life or property at sea;
- (b) perils, damages and accidents of the sea or other navigable waters;
- (c) fire on the ship, unless caused by fault or privity of the carrier.

In WP.36 it is stated that the text of the fire exception in both Variants A and B of draft article 22 will remain as it currently exists and in footnote 54 it is explained that “diverging views were expressed in the Working Group with respect to the text of the exception” and that this was the reason of keeping the text unaltered. It is, however, worth mentioning which such diverging views had been and, therefore, paragraph 126 of A/CN.9/544 is reproduced below:

With regard to the fire exception currently in chapter 6 of the draft instrument, the view was expressed that the wording was unclear in that it seemed to lead to the conclusion that the fault of the carrier must be a personal fault. The question was raised whether this exception was necessary at all in light of other provisions making the carrier responsible for the acts of its servants or agents. However, it was suggested that if the fire exception was maintained for traditional reasons, the provision should be adjusted to clarify that the carrier is also

¹⁸ A/CN.9/544, paragraphs 108-110.

¹⁹ A/CN.9/544, paragraphs 111-116.

responsible for the acts of its servants or agents. In addition, the view was expressed that the existence of the fire exception unfairly placed the burden of proof on the consignee. There was some support for these views, but another view was expressed that the fire exception should be the same as it was in the Hague and Hague –Visby Rules.

Paragraph 3 – The linkage between article 14 and article 13

As previously mentioned, in the first redraft of article 14 prepared by the informal drafting group in October 2003, the linkage between article 14 and article 13 was moved to a separate paragraph, paragraph 3. Since the original approach, that had the effect of qualifying as overriding the obligations of the carrier under article 13, had met with a considerable opposition, an attempt was made to find a softer solution, such solution consisting in a reversal of the burden of proof (which is conceivable only in case the carrier has invoked an excepted peril) if one of the situations described in article 13 has occurred. Although it was agreed that the claimant should not have the burden of proving the failure by the carrier to exercise due diligence, but only the occurrence of anyone of such situations (unseaworthiness of the ship, improper manning, equipping and supplying of the ship, holds not being fit and safe for the reception and carriage of the goods), different views were expressed in respect of the causal relationship between the loss, damage or delay and anyone of such events. One view was that the claimant should prove only the existence of one of the above situations; another that he should prove also the causal connection between the loss, damage or delay and one of the situations described previously. The two alternatives appear in the second redraft. An intermediate solution, that was mentioned during the session, was that the claimant should prove the likelihood of the loss, damage or delay having been caused by one of the three situations mentioned in article 13.

The three alternatives now appear in the text prepared by the Secretariat²⁰. The intermediate alternative, expressed with the words “that the loss, damage or delay could have been caused by ...”, is similar to the solution adopted in article 18.2 of CMR in respect of the proof to be supplied by the carrier that the loss or damage was caused by one of the special risks enumerated in article 17. Article 18.2 in fact so provides: “when the carrier establishes that in the circumstances of the case, the loss or damage could be attributed to one or more of the special risks referred to in article 17, paragraph 4, it shall be presumed that it was so caused”.

Paragraph 4 – Contributing causes

The Draft Outline Instrument of 31 May 2001 contained in article 6.1.3 a provision on the allocation of liability in case of concurring causes based on article 5.7 of the Hamburg Rules except that while this article provided that the carrier must prove the amount of the loss, damage or delay in delivery not

²⁰ WP.36, paragraph 7.

attributable to its fault, article 6.1.3 of the Draft Outline Instrument provided that if the apportionment cannot be established with sufficient certainty, then the liability of the carrier shall be one-half of the loss or damage. An alternative wording was subsequently suggested and was included in the Draft Instrument submitted to UNCITRAL. Such alternative provided that the carrier is liable for the loss, damage or delay to the extent the claimant proves that it was attributable to an event for which the carrier is liable, while it is not liable for the loss, damage or delay to the extent the carrier proves that it is attributable to an event for which the carrier is not liable, the 50% rule applying only if there is no evidence on which the overall apportionment can be established. Since the first alternative was supported by a clear majority, in WP.32 the second one was placed in a footnote.

When this provision was considered in October 2003 an attempt was made by the informal drafting group to find a wording on which a consensus could be reached and the proposal was made to avoid the allocation of the burden of proof, leaving the apportionment to the Court. While this idea met with the general approval of the Working Group, it was felt that the wording suggested was not satisfactory since it did not clarify the type of the concurring causes. The third redraft submitted by one delegation tried to cure this defect by referring to situations where the fault of the carrier contributes to the loss, damage or delay together with concurring causes for which the carrier is not liable and made also clear that the apportionment should not prejudice the right to limit liability. Unanimous support was expressed that such redraft should form the basis for future work and it therefore appears in WP.36.

BACKGROUND PAPER ON RIGHT OF CONTROL

KARL-JOHAN GOMBRII

1. Introduction

This paper is intended to provide background information to Chapter 11 of the Draft Instrument, dealing with the right of control of the goods in transit. In this context, control means by one or more persons which may loosely be referred to as cargo interests. Such right of control, or right of disposal as it is sometimes referred to, is motivated by commercial needs.

In some instances there is a commercial need for cargo interests to be able to agree with the carrier on variations of the contract of carriage and the question is who has that right. Another question is whether such a right may be transferred during the time when the goods are in the custody of the carrier. If so, the next questions are when and how the right may be transferred and to whom.

In other instances there is a need for the cargo interests to be able to give instructions to the carrier, for example if the goods are sold or resold in transit or if it becomes apparent, during transit, that the consignee and buyer of the unpaid goods has become insolvent. Questions then arise as to 1) who can give such instructions, 2) as to what and 3) with which consequences with respect to costs.

In yet other instances the carrier may require instructions or information in relation to the good, and the question is to what extent and from whom can such instructions or information be required.

2. Existing transport law conventions

In the present maritime law conventions, such as the Hague Visby Rules and the Hamburg Rules, there are no specific provisions on right of control. The Hague Visby Rules applies only when a bill of lading or similar document of title has been issued. Since the holder of all original bills of lading covering certain goods has an exclusive right to demand delivery of the goods, it follows that such a holder is in reality in a position to agree with the carrier on variations of the contract of carriage as long as the bills are amended accordingly or exchanged with new bills reflecting the changed contract of carriage. In either case the carrier will not be in breach of the contract of carriage by amending it in agreement with the holder of all original bills of lading.

The Hamburg Rules, on the other hand, apply to the contract of carriage, as defined, irrespective of whether a bill of lading has been issued or not. Where no such document of title has been issued, there will be a commercial

need for means of e.g. changing the consignee, which of course cannot be done simply by transferring e.g. a waybill to a buyer, since at the outset, the carrier can deliver the goods under a waybill to the person named as consignee in that document, irrespective of who physically holds the document. The Hamburg Rules, however, do not provide any such means but are silent on the issue as is the Convention on International Multimodal Transport of Goods.

The CMR Convention deals with right of control in a way which, by and large, is also contained in the COTIF-CIM Convention, the CMNI Convention as well as the Warsaw and Montreal Conventions. Very briefly, the CMR provides that the sender (corresponding to the shipper in the Draft Instrument) has the right to ask the carrier to stop the goods in transit, to change the place of delivery and to change the consignee. This right ceases to exist when a certain copy (the so called second copy) of the transport document (the consignment note) is handed to the consignee or when the consignee demands delivery of the goods at the place of delivery. If the transport document has an entry to the effect that the consignee shall have the right of disposal, he will have so from the time of issuance of the transport document, whereas the sender will have no such right. All of this is conditional upon

- a) the new instructions to the carrier being entered on the original (the so called first copy) of the transport document,
- b) the carrier being indemnified in respect of all costs and losses, and
- c) compliance with the instructions being possible and not interfering with the normal operation of the carrier and not prejudicing senders or consignees of other goods.

A solution similar to that of the CMR is also adopted in Art 6 of the CMI Uniform Rules for Seaway Bills. It may further be noted that the CMI Rules for Electronic Bills of Lading in its Art 7, Right of Control and Transfer, provides for right of disposal, basically to the effect that the holder of the “electronic key” which is transferable, holds the right.

3. Stoppage in transit

Stoppage in transit is a concept which is recognized in the international law of sales of goods. Where it is apparent that a buyer is unable or unwilling to perform its obligations under the sales contract, an unpaid seller is given the right to “prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them”, see Art 71(2) of the Convention on Contracts for the International Sale of Goods. The Convention also provides that the provision relates only to the rights in the goods as between the buyer and the seller. However, in many jurisdictions the same right of stoppage in transit will apply also as between the shipper and the carrier, where the shipper is also a seller of goods.

4. The Draft Instrument

It has been felt that a new instrument ought to deal with the right of control, partly because bills of lading are in many trades to a large extent

replaced by waybills, and partly also because a well defined and transferable right of control may play a useful role in the development of electronic commerce.

The text of Chapter 11 of the Draft Instrument, in its present version, is reproduced below with comments derived from UNCITRAL Working Papers 21 and 32 (A/CN.9/WG.III/WP.21 and 32):

Article 53.

~~44.1~~ *[The right of control of the goods [means][includes][comprises] the right to agree with the carrier to a variation of the contract of carriage and the right under the contract of carriage to give the carrier instructions in respect of these goods during the period of its responsibility as stated in article 7(1) 4.1.1.] Such right to give the carrier instructions comprises rights to:*

(a) ~~(i)~~ give or modify instructions in respect of the goods [that do not constitute a variation of the contract of carriage];

(b) ~~(ii)~~ demand delivery of the goods before their arrival at the place of destination;

(c) ~~(iii)~~ replace the consignee by any other person including the controlling party;

[(d) ~~(iv)~~ agree with the carrier to a variation of the contract of carriage.]

This provision defines the right of control. It makes a distinction between instructions that constitute a variation of the contract of carriage and instructions that do not. paragraph (a) relates to “normal” instructions within the scope of a contract of carriage, such as to carry the goods at a certain temperature. Paragraph (b) and (c) are important for an unpaid seller that may have retained title to the goods or may wish to exercise a right of stoppage under its contract of sale. Paragraph (b) may enable the seller to prevent the goods from arriving in the jurisdiction of the consignee, while paragraph (c) enables the controlling party to have the goods delivered to itself, its agent or to a new buyer. Paragraph (d) underlines that, for all practical purposes, the controlling party is the carriers’ counterpart during the carriage. This article gives the controlling party full control over the goods.

It has been discussed in the UNCITRAL Working Group whether the opening sentence should be somewhat altered and moved to Art 1 (g) in the definition of “right of control”, which might require certain modifications of Art 53. It has also been debated whether paragraph (d) should be deleted to preserve the unilateral nature of any instruction that might be given to the carrier by the controlling party, as opposed to any modification regarding the terms of the contract of carriage which would require the mutual agreement of the parties to that contract. In response, it was suggested that this provision served a useful purpose in the definition of the right of control in that it made

it clear that the controlling party should be regarded as the counterpart of the carrier during the voyage.

Article 54.

1. ~~11.2~~ (a) When no negotiable transport document or no negotiable electronic record is issued, the following rules apply:

(a) ~~(i)~~ The shipper is the controlling party unless the shipper [and consignee agree that another person is to be the controlling party and the shipper so notifies the carrier. The shipper and consignee may agree that the consignee is the controlling party] [designates the consignee or another person as the controlling party].

(b) ~~(ii)~~ The controlling party is entitled to transfer the right of control to another person, upon which transfer the transferor loses its right of control. The transferor [or the transferee] shall notify the carrier of such transfer.

(c) ~~(iii)~~ When the controlling party exercises the right of control in accordance with article 53 ~~11.1~~, it shall produce proper identification.

(d) ~~(iv)~~ The right of control [terminates] [is transferred to the consignee] when the goods have arrived at destination and the consignee has requested delivery of the goods.]

2. ~~(b)~~ When a negotiable transport document is issued, the following rules apply:

(a) ~~(i)~~ The holder or, in the event that more than one original of the negotiable transport document is issued, the holder of all originals is the sole controlling party.

(b) ~~(ii)~~ The holder is entitled to transfer the right of control by passing the negotiable transport document to another person in accordance with article 59 ~~12.1~~, upon which transfer the transferor loses its right of control. If more than one original of that document was issued, all originals must be passed in order to effect a transfer of the right of control.

(c) ~~(iii)~~ In order to exercise the right of control, the holder shall, if the carrier so requires, produce the negotiable transport document to the carrier. If more than one original of the document was issued, all originals [except those that the carrier already holds on behalf of the person seeking to exercise a right of control] shall be produced, failing which the right of control cannot be exercised.

(d) ~~(iv)~~ Any instructions as referred to in article 53(b), (c) and ~~11.1(ii), (iii), and (iv)~~ given by the holder upon becoming effective in accordance with article 55 ~~11.3~~ shall be stated on the negotiable transport document.

3. ~~(c)~~ When a negotiable electronic record is issued:

(a) ~~(i)~~ The holder is the sole controlling party and is entitled to transfer the right of control to another person by passing the

negotiable electronic record in accordance with the rules of procedure referred to in article ~~6~~ 2-4, upon which transfer the transferor loses its right of control.

(b) ~~(ii)~~ In order to exercise the right of control, the holder shall, if the carrier so requires, demonstrate, in accordance with the rules of procedure referred to in article ~~6~~ 2-4, that it is the holder.

(c) ~~(iii)~~ Any instructions as referred to in article 53(b), (c) and (d) ~~11-1~~, (ii), (iii), and (iv) given by the holder upon becoming effective in accordance with article ~~55~~ 11-3 shall be stated in the electronic record.

4. ~~(d)~~ Notwithstanding the provisions of article ~~62~~ 12-4, a person, not being the shipper or the person referred to in article ~~31~~ 7-7, that transferred the right of control without having exercised that right, shall upon such transfer be discharged from the liabilities imposed on the controlling party by the contract of carriage or by this instrument.

Paragraph 1 applies in all cases except when a negotiable document has been issued. The principle is that the shipper is the controlling party, but that it may agree with a consignee otherwise. The second principle included in this paragraph is that the controlling party is entitled to transfer its right to any third party.

Unlike the position under, for instance, the CMR Convention, where the so called second copy of the non-negotiable road consignment note has to be transferred in order to transfer the right of control, the document does not play any role under paragraph 1 of the Draft Instrument. The controlling party remains in control of the goods until their final delivery. Also, there is no automatic transfer of the right of control from the shipper to the consignee as soon as the goods have arrived at their place of delivery, as is the case under the CMI Uniform Rules for Seaway Bills. If there were such an automatic transfer, the most common shipper's instruction to the carrier, namely not to deliver the goods before it has received the confirmation from the shipper that payment of the goods has been effected, could be frustrated. This, obviously, would raise serious practical concern.

When a negotiable transport document has been issued, paragraph 2 applies. Here, it is provided that the holder of such document is the sole controlling party. If through endorsement the negotiable instrument is passed to another party, the right of control is automatically transferred as well. Further, the presentation rule applies if the holder wants to exercise its right of control. In order to protect third party holders, any variation of the contract of carriage has to be stated on the negotiable document.

A complication may arise if the negotiable document has been issued in more than one original. The provision follows the current practice that only holding the full set of originals entitles the holder to exercise the right of control. The consequence is that, if a person has parted with one (or more) originals and has kept one or more other originals, nobody is in control of the goods.

As to paragraph 1 (a), the question has been raised why the consent of

the consignee is required to designate the controlling party other than the shipper, when the consignee is not a party to the contract of carriage. Further, it has been observed that if the contract provides for the shipper to be the controlling party, sub-paragraph 1 (b) confers to him the power to unilaterally transfer his right of control to another person. These concerns have been addressed by placing the words that follow the words “unless the shipper” in square brackets for possible deletion and inserting instead, in square brackets, the text “designates the consignee or another person as the controlling party”.

In relation to paragraph 1 (b) it has been mentioned that in certain countries, the transfer of the right of control could not be completed by a mere notice given by the transferee to the carrier could be met by deleting the words “or the transferee” in sub-paragraph 1 (b). This phrase is placed in square brackets.

In relation to paragraph 1 (d) it has been noted that nothing is said in Art 54 regarding the time until which the right of control can be exercised in case a non-negotiable transport document or electronic record is issued. It is thought that something could be said to take care of the observation that has been made, and sub-paragraph 1 (d) has been added. However, it has also been noted that the common shipper’s instruction to the carrier not to deliver the goods before it has received the confirmation from the shipper that payment of the goods has been effected could be frustrated. Further, since Art 53 states that the right of control is the right to give the carrier instructions during the period of responsibility, it may be unnecessary to state when the right of control ends.

As to paragraph 2 (c), the Working Group has agreed that it does not sufficiently address the consequences of the situation where the holder has failed to produce all copies of the negotiable document to the carrier, and that in such cases, the carrier should be free to refuse to follow the instructions given by the controlling party. The Working Group has generally been of the opinion that the right of control can not be exercised unless all copies of the bill of lading are produced by the controlling party but that an exception should be made to that rule where one copy of the bill of lading is already in the hands of the carrier. In order to meet these concerns, the UNCITRAL secretariat has suggested that the underlined phrases should be added to paragraph 2 (c).

In relation to paragraph 3 (c), the Working Group has deferred consideration of sub-paragraph 3 until it comes to a more precise understanding of the manner in which the issues of electronic commerce will be addressed.

The Working Group has found the substance of sub-paragraph 4 to be generally acceptable.

Article 55.1. ~~11.3~~ (a) Variant A of paragraph 1

Subject to ~~the provisions of~~ paragraphs 2 and 3 ~~(b) and (c)~~ of this article, if any instruction mentioned in article 53(a), (b) or (c) ~~11.1(i), (ii), or (iii)~~

(a) ~~(i)~~ can reasonably be executed according to its terms at the moment that the instruction reaches the person to perform it;

(b) ~~(ii)~~ will not interfere with the normal operations of the carrier or a performing party; and

(c) ~~(iii)~~ would not cause any additional expense, loss, or damage to the carrier, the performing party, or any person interested in other goods carried on the same voyage, then the carrier shall execute the instruction. If it is reasonably expected that one or more of the conditions mentioned in subparagraphs (a), (b), (c) ~~(i), (ii), and (iii)~~ of this paragraph is not satisfied, then the carrier is under no obligation to execute the instruction.

Variant B of paragraph 1

Subject to paragraphs 2 and 3 of this article, the carrier shall be bound to execute the instructions mentioned in article 53(a), (b), and (c) ~~11.1(i), (ii) and (iii)~~ if:

(a) ~~(i)~~ the person giving such instructions is entitled to exercise the right of control;

(b) ~~(ii)~~ the instructions can reasonably be executed according to their terms at the moment that they reach the carrier;

(c) ~~(iii)~~ the instructions will not interfere with the normal operations of the carrier or a performing carrier.

2. ~~(b)~~ In any event, the controlling party shall ~~indemnify~~ reimburse the carrier, performing parties, and any persons interested in other goods carried on the same voyage ~~against~~ for any additional expense ~~that they may incur and indemnify them against any~~ loss, or damage ~~that they may occur~~ suffer as a result of executing any instruction under this article.

3. ~~(c)~~ [If ~~a~~ the carrier

(a) ~~(i)~~ reasonably expects that the execution of an instruction under this article will cause additional expense, loss, or damage; and

(b) ~~(ii)~~ is nevertheless willing to execute the instruction, then the carrier is entitled to obtain security from the controlling party] ~~If requested by the carrier, the controlling party shall provide security~~ for the amount of the reasonably expected additional expense, loss, or damage.

4. ~~(d)~~ The carrier shall be liable for loss of or damage to the goods resulting from its failure to comply with the instructions of the controlling party in breach of its obligation under paragraph 1 of this article.

In Art 53 the distinction is made between instructions that constitute variations of the contract of carriage and the instructions that do not. In this article, the distinction is between instructions that a carrier (in principle) has to execute and instructions that are subject to agreement between the carrier and the controlling party. The line of distinction is not the same in both articles. It is obvious that variations of the contract of carriage are fully subject to agreement between the carrier and the controlling party. However, that does not apply to the two variations mentioned under Art 53 (b) and (c). These two, in principle, have to be executed by the carrier because either may be needed for a seller to resume control of the goods under the contract of sale, e.g. when the goods are not paid for by the buyer.

For the carrier to be under an obligation to execute the instructions, it needs the protection of certain conditions precedent. They are also addressed in this article. Other transport conventions include similar protections. A carrier is entitled to decline the execution of an instruction, *inter alia*, if the execution interferes with its normal operations. That means that the carrier may never be forced to call at other ports than the ports in its normal itinerary, or to discharge cargo that is overstowed with other cargo. Also, the carrier may decline an instruction if compliance would result in additional costs.

The view has been expressed that these provisions are likely to create extensive uncertainties in return for a very small advantage, insofar as they give a right to a controlling party unilaterally to vary what would otherwise be contract terms in situations where the carrier does not want to accept a given instruction. It has also been argued that maritime carriage cannot be compared with other transportation modes as far as right of control is concerned. The contrary view, that similar safe guards under other transport conventions do not create any difficulty, has also been noted. Further, the point has been made that the right of control should not be diluted too far, because of its potential role in the development of commerce in maritime transport.

Variant A of paragraph 1 is based on the original text of the Draft Instrument. The Working Group has generally agreed that paragraph 1 should be recast and that the new structure of the paragraph should address, firstly the circumstances under which the carrier should follow the instructions received from the controlling party, and secondly the consequences of execution or non-execution of such instructions. The secretariat has been requested to prepare a revised draft of the provision, with possible variants, for purposes of a continued discussion at a future session, which revision is reflected in variant B of paragraph 1.

To avoid contradiction between sub-paragraphs 1 (c) and Art 53 (b) with respect to the right of control and the possible generation of “additional expenses”, it has been suggested that either the carrier should be under no obligation to execute the instruction received under paragraph 53 (b), or paragraph 1 (c) should limit the obligation of the carrier to execute to cases where the instruction would not cause “significant” additional expenses. Further, broad support has been expressed in the Working Group for the deletion of paragraph 1 (c). In view of these suggestions paragraph 1 could be

reworded as indicated, and the right of the carrier under paragraph 3 could be made more stringent.

The substitution of the word “reimburse” for “indemnify” in paragraph 2 has been made since the notion of “indemnity” inappropriately suggests that the controlling party might be exposed to liability, and “remuneration” is believed to be more in line with the rightful exercise of the right of control by the controlling party.

Although paragraph 3 has been found to be “generally acceptable”, the changes indicated have been made in connection with the comments on paragraph 1.

As to paragraph 4, a question has been raised regarding the nature of the obligation incurred by the carrier under Art 45, and whether the carrier should be under an obligation to perform, or be under a less stringent obligation to undertake its best efforts to execute the instructions received from the controlling party. The view has been expressed that the former, more stringent obligation, should be preferred. However, the carrier should not bear the consequences of failure to perform if it could demonstrate that it had undertaken reasonable efforts to perform or that performance would have been unreasonable under the circumstances. As to the consequences of the failure to perform, it has also been suggested that the Draft Instrument should be more specific, for example, by establishing the type of liability to be assumed by the carrier and the consequences of non-performance on the subsequent execution of the contract. In furtherance of these views, a new paragraph 4 has been added. As regards the consequences of the non-execution of the instructions, it has been assumed that the implied intention is to provide that the carrier shall be liable in damages. If a provision to that effect is included, one might also consider whether there should be a limitation of such liability.

Article 56.

~~44.4~~ *Goods that are delivered pursuant to an instruction in accordance with article 53(b) ~~44.1(ii)~~ are deemed to be delivered at the place of destination and the provisions relating to such delivery, as laid down in ~~chapter article~~ 10, are applicable to such goods.*

The UNCITRAL Working Group has found the substance of Art 56 to be generally acceptable.

Article 57.

~~44.5~~ *If during the period that the carrier or a performing party holds the goods in its custody, the carrier or a performing party reasonably requires information, instructions, or documents in addition to those referred to in article 27(a) ~~7.3(a)~~, it shall seek such information, instructions, or documents from the controlling party ~~the controlling party, on request of the carrier or such performing party, shall provide such information.~~ If the carrier, after reasonable effort, is unable to identify and find the controlling party, or the controlling party is unable to provide adequate information,*

instructions, or documents to the carrier; the obligation to do so shall be on the shipper or the person referred to in article 31 7.7.

This provision addresses the situation where a carrier needs instructions from the party interested in the goods during the carriage. Examples are: The goods cannot be delivered as envisaged, additional instructions are needed for the care of the goods etc. The principal person to give the carrier instructions is the controlling party, because that party may be assumed to have an interest in the goods. The obligation to provide instructions also applies to an intermediate holder if it is the controlling party. In Art 54.4 it is provided that such intermediate holder is discharged from his obligation as soon as it is no longer a holder.

However, a controlling party may not always exist or is not always known to the carrier. Then, the obligation to provide information or instructions is on the shipper or on the person referred to in Art 31. If the controlling party elects not to give (appropriate) instructions, that party may become liable to the carrier for not giving them.

A suggestion that Art 57 should allow the carrier the choice to seek instructions from “the shipper or the controlling party” has not been supported by the Working Group. On the other hand, the suggestion to add a reference to the performing party in addition to the carrier has been generally supported. Changes have also been made in an attempt to clarify the wording of Art 57.

Article 58.

~~11.6 The provisions of Articles 53(b) and (c) 11.1 (ii) and (iii), and 55 11.3~~ may be varied by agreement between the parties. The parties may also restrict or exclude the transferability of the right of control referred to in article 54(1)(b) 11.2 (a)(ii). If a negotiable transport document or ~~an~~ a negotiable electronic record is issued, any agreement referred to in this paragraph must be stated or incorporated in the contract particulars.

This provision emphasizes that the regulation of the essential elements of the right of control is not mandatory. A controlling party may have reasons for insisting that its right of control shall not be transferable and a carrier may wish to exclude the possibility of delivery of the goods being claimed during the voyage.

There has been broad agreement in the Working Group that the revised Art 58 should in no way suggest any restriction of the freedom of parties to derogate from Chapter 11 on Transfer of Rights. Further, it appears always to have been implied that the last sentence of Art 58 should apply only if a negotiable document or electronic record is issued. This point has been expressly clarified in the revised text, as has the possibility to incorporate agreements by reference.

BACKGROUND PAPER ON JURISDICTION AND ARBITRATION

ALLAN PHILIP

I. Introduction

1. This note is intended as a basis for the discussion within the CMI of regulation of issues relating to jurisdiction, including choice of forum clauses, and to arbitration clauses in contracts on the carriage of goods by sea.

Jurisdiction

2. Jurisdiction of the courts is in general subject to the national law of each country. In Europe, however, an important part of the issues of jurisdiction is regulated by the Brussels and Lugano Conventions and the Brussels I Regulation (Regulation CE no. 44/2001). Generally, such national or regional jurisdiction rules also apply within the field of maritime law, including the law of carriage of goods by sea, subject, of course, to any special national legislation or conventions. One such convention is the Hamburg Rules.

3. Choice of forum clauses are well known in international contracts and, on varying conditions, recognized and enforced by national law. They are recognized and enforced in European law in the circumstances and on the conditions prescribed in Article 17 of the Brussels and Lugano Conventions and in Article 23 of the Brussels I Regulation. The Hague Conference on Private International Law in 1965 drafted a Convention on the Choice of Court which, however, due to the contemporaneous Brussels Convention, never came into force. The Hague Conference is now at work on a new such convention regulating exclusive choice of court agreements which, however, at present seems to be intended not to cover contracts for the carriage of goods by sea, because of a wish not to interfere with the discussions in UNCITRAL and the regulation of the issue in the Hamburg Rules.

4. Apart from the provision in Article 21 of the Hamburg Rules and particular national regulation, such as in the Scandinavian maritime laws, choice of court agreements or rules of jurisdiction generally are not subject to special regulation in the law of carriage of goods by sea. General rules of the law of jurisdiction apply. Attention should, however, be drawn to Article 3.8 of the Hague-Visby Rules which in some legal systems is interpreted to the effect that a choice of court agreement may be set aside if it has the effect of relieving or lessening the carrier's liability under those rules¹. With these

¹ Cf. The *Morviken* [1983] 1 LLR 1.

exceptions, the parties are generally free to choose the forum for deciding their disputes. Generally, the issue may be said to be within the scope of the parties' freedom of contract and a subject of party autonomy. And outside the parties' common agreement on choice of court, jurisdiction is regulated by general rules of jurisdiction, either national or conventional.

Arbitration.

5. Coming now to the subject of arbitration clauses, much of what has been said about choice of forum clauses applies as well to arbitration agreements. Generally, arbitration agreements are regulated by international conventions, in particular by Article II of the New York Convention, 1958, with more than 130 ratifications, and in Europe by the Geneva Convention, 1961. In addition, most countries have arbitration acts which to an increasing extent are based upon or inspired by the UNCITRAL Model Law. Both the New York Convention and the Model Law contain form requirements to the arbitration agreement and make its validity depend upon the arbitrability of the subject matter of the agreement. Otherwise, apart from Article 22 of the Hamburg Rules, there is a far reaching freedom of contract with respect to arbitration agreements, including the choice of the applicable law. However, again Article 3.8 of the Hague Rules may in some countries work as a limitation on arbitration clauses, and certainly does so with respect to choice of law clauses.

The Hamburg Rules and the CMR Convention.

6. In particular with respect to the Hamburg Rules, Article 21 of the Hamburg Rules excludes the possibility of choice of court agreements between the parties, except in the situation where a claim under the contract of carriage already is alleged to have arisen (Article 21.5). The plaintiff at his option may institute an action in any court which is competent according to the *lex fori* and to which the claim is connected in one of the ways enumerated in Article 21.1 or 2. That is the court 1) where the defendant has his principal place of business or, failing that, his habitual residence, or 2) where the contract was made if the defendant there has a place of business, branch or agency through which the contract was made, or 3) where the port of loading or discharge is situated, or 4) where the carrying vessel or another vessel in the same ownership has been arrested, or 5) any additional place designated in the contract of carriage by sea. No. 5) is the closest the Hamburg Rules come to a choice of court agreement, but the designation cannot be made to the exclusion of the other options. None of the options may be excluded by the contract, and no proceedings may be instituted in any other place than those mentioned in Article 21.1 or 2. Where an action has been initiated in one of these courts, or the court has delivered its judgment, no new action may be started between the same parties on the same grounds in any other country, unless the first judgment is not enforceable in such country. Article 21 does not prevent a party from seeking provisional or protective measures in any country.

7. The rule in Article 21.2 on jurisdiction based upon arrest (no. 4 in paragraph 6 above) is wider than Article 7 of the 1952 Arrest Convention but

more or less corresponds to Article 7 of the 1999 Arrest Convention. Article 21.2 of the Hamburg Rules simply provides for jurisdiction to determine the case on the merits in the court of the place of arrest. There is no restriction on this jurisdiction. However, Article 21.2 gives the shipowner the right to have the case removed to one of the other jurisdictions mentioned in Article 21, provided he furnishes sufficient security to ensure payment of the claim for which arrest is made in case he loses. Article 7 of the 1999 Arrest Convention provides for jurisdiction on the merits in the courts of the State where arrest has been effected, unless the parties agree to submit the dispute to a court of another state, which accepts jurisdiction, or to arbitration. Thus, in principle, it imposes no restrictions on the jurisdiction, but it accepts the validity of an exclusive choice of court agreement or an arbitration agreement between the parties. Finally, Article 7 of the 1952 Arrest Convention is a little complicated. The principal rule is, that the courts of the country in which the arrest was made have jurisdiction on the merits under the Convention, if they have it under their own law (*lex fori*). Thus, this rule does not itself directly confer jurisdiction, but only permits jurisdiction to be exercised if its existence follows from *lex fori*. If *lex fori* does not confer jurisdiction on the merits on the courts of the State of arrest, they shall nonetheless have such jurisdiction under the Convention, if there exists one of five different connections to that country in addition to the arrest, viz:

- 1) The claimant has his habitual residence or principal place of business there;
- 2) The claim arose in the country where the arrest was made;
- 3) The claim concerns the voyage of the ship during which the arrest was made;
- 4) The claim arose out of a collision;
- 5) The claim is for salvage; or
- 6) The claim is upon a mortgage or hypothecation of the arrested ship.

It follows that there may be cases under Article 7 of the 1952 Arrest Convention, where arrest does not give rise to the existence of jurisdiction. That is the case, if *lex fori* does not provide for jurisdiction on the merits based upon arrest in the courts of the forum state and none of the connecting factors mentioned under 1 to 6 above applies. Therefore, the Hamburg Rules and the Arrest Convention, 1999, both provide for a broader arrest jurisdiction than the Arrest Convention, 1952.

8. Article 31 of the CMR Convention contains jurisdiction rules corresponding to nos. 1), 2) and 5) above of Article 21 of the Hamburg Rules. It also contains a rule providing for jurisdiction in the place where the goods were taken over by the carrier or which was designated for their delivery. This corresponds for road transport to no. 3) above in the Hamburg Rules. The CMR Convention also contains a rule of priority for the court first seized, but, in addition, it has a rule of enforcement of judgments which is not found in the Hamburg Rules.

9. Article 22 of the Hamburg Rules permits parties to conclude arbitration agreements not only when a claim has arisen, but also in respect of future disputes. Only, where a claim has arisen, the provisions of Article 22 do not in any way restrict the parties' freedom of contract (Article 22.6).

Article 22.3 contains a provision similar to Article 21.1, which regulates where, at the option of the claimant, the seat of the arbitration shall be. Those places are exactly the same as those enumerated in Article 21.1, whereas the place of arrest is not repeated.

Article 22 contains certain additional provisions regulating the use of arbitration in contracts of carriage by sea. It provides in Article 22.4 that the arbitrator shall apply the Hamburg Rules. It seems that it is possible for the parties to provide in the agreement which law shall be applied to issues falling outside the scope of the Hamburg Rules.

The rule in Article 22.3 regulating the choice of the seat of arbitration and the choice of law rule in Article 22.4 are deemed to be a part of any arbitration agreement made prior to a claim having arisen and any inconsistent term shall be regarded as null and void, unless the parties agree otherwise after the claim has arisen (Article 22.5).

Secondly, Article 22.1 provides that the parties' arbitration agreement must be evidenced in writing. It must be assumed that this is a minimum requirement and that the arbitration law otherwise applicable to the agreement regulates the form of the agreement. It is also assumed that the provision shall be interpreted in accordance with Article 7 of the Model Law which defines writing to include means of telecommunication which provide a record of the agreement.

Finally, Article 22.2 contains a rule regulating the application of arbitration clauses in charter-parties to holders of bills of lading issued pursuant to such a charter-party. According to this provision, the carrier may not invoke an arbitration clause in a charter-party as against a holder of a bill of lading issued under that charter-party who has acquired the bill of lading in good faith, unless the bill of lading contains a special annotation providing that the arbitration clause shall be binding upon him.

10. Article 33 of the CMR Convention provides for the general acceptance of arbitration clauses in contracts of carriage by road on the sole condition that the clause provides for the application of the CMR Convention.

Discussion in the CMI.

11. Only a limited discussion of the questions of jurisdiction and arbitration has taken place in the CMI. The questions were considered in 1995-96 by the CMI International Subcommittee on the Uniformity of the Law of the Carriage of Goods by Sea.² In accordance with the report of the Chairman of this Subcommittee,³ it has with respect to jurisdiction been suggested not to retain the rule in Article 21.2 (a) of the Hamburg Rules about removal of the action started in the court where a ship has been arrested. It has also been proposed to delete the rule on security in Article 21.2 (b) and the rule on priority of the case first instituted in Article 21.4. With respect to arbitration,

² Cf. CMI Yearbook 1997 p. 350-356.

³ Cf. CMI Yearbook 1999 p. 318.

it has been suggested not to have any rule on where the place of arbitration shall be, i.e. to delete Article 22.3. The UNCITRAL secretariat in chapters 15 and 16 of its draft of the Instrument (WP32) has two variants, Variant A corresponding to Article 21 and 22 of the Hamburg Rules, and Variant B containing the two Articles as they would be without the provisions suggested in the CMI discussions to be deleted.

12. The questions were considered again, albeit briefly, at a meeting of the CMI International Subcommittee on Issues of Transport Law held on November 17, 2003.⁴ It was questioned whether the Instrument at all should address this subject. It was also argued that Articles 21 and 22 constitute a compromise between two extreme positions under current law. If rules shall be included, the question was raised whether the places of receipt and delivery should replace the port of loading and discharge or perhaps all four should be included. Some speakers saw the rules as protecting the carrier, others as protecting the cargo interests, while some defended freedom of contract between parties with equal bargaining power and supported the US proposals relating to OLSAs⁵. Other issues that were raised were the position of the performing party, the use of the *forum non conveniens* rule, and the admissibility of using a forum for actions to obtain a declaration of non-liability.

II. Discussion

Jurisdiction

13. The principal problem seems to be whether the new Instrument shall contain rules on jurisdiction *ad modum* Art. 21.1 of the Hamburg Rules or not. Is it necessary in this particular area to put new restrictions on the parties' freedom of contract, where – apart from the Hamburg Rule-countries – they have not existed before? And if such a need exists, do the Hamburg Rules strike the right balance? Is it necessary to rule out completely an exclusive choice of court agreement, or would a restriction on the places which could be chosen in such an agreement be sufficient? In order to have a reasonable basis for a discussion thereof, it seems necessary to analyse the situations covered by this rule a little closer.

14. There is hardly any doubt that the purpose of the provision first of all has been to give the cargo owner a certain protection by giving him an option to sue the carrier in certain jurisdictions to which either or both parties have a connection. At the same time, these courts are courts to which either the carrier or the voyage is connected, so that it should not be too burdensome for the carrier to be sued in these places. Finally, while an agreement providing for exclusive jurisdiction in a particular court is excluded in Article 21.1, the parties may agree on a particular jurisdiction as an additional option.

15. As Article 21.1 is drafted, however, it also applies to the reverse situation,

⁴ Cf. Also CMI Newsletter No. 3, 2003, p. 17 to 18

⁵ Cf. UNCITRAL WP 34 paragraphs 34 and 35

where the carrier sues the cargo-owner. The American delegation to UNCITRAL finds that it should not apply in that situation, because it makes it possible for the carrier, by suing the cargo-owner for a declaration of non-liability to deprive the cargo-owner of his right to choose the forum among the options given to him.⁶ That is true in such cases. But is it so wrong? And in any event, the carrier may have other reasons to sue the cargo-owner where it might be reasonable to give him an option between different courts. The question is whether the courts enumerated in Article 21.1 are the proper courts for the purpose of the carrier suing the cargo-owner. That seems in most cases to be so. An alternative might be to provide that the carrier must sue in a court or courts which under general rules of jurisdiction have jurisdiction over the cargo-owner, which is the same as not providing any special rule in the Instrument. Perhaps, the rule about the parties' right to designate an additional place could be retained.

16. A special problem is the provision in Article 21.1 that the option to choose one of the jurisdictions listed is conditioned upon the court being competent to take jurisdiction under its own law. Thus, Article 21.1 does not itself confer jurisdiction on the courts listed therein. That will usually not create problems in respect of Article 21.1 (a), but may well do so at least in respect of (b) and (c). The question may be raised whether States parties to the Instrument should be obliged to provide for jurisdiction in the courts listed, and whether, on the other hand, keeping Article 3 (8) of the Hague Rules in mind, the rule on jurisdiction should be limited to courts in States parties, which is the case in the Hamburg Rules, so as to ensure the application of the Instrument to the dispute.

17. In a discussion as to whether to include a rule along the lines of Article 21.1, it may be asked whether – if such a rule shall be included – there is a need to prevent the parties from making their choice of option at the time of contracting, at least if the choice in that case is limited to (a) to (c)? Probably, jurisdiction in the place of arrest should be retained as an alternative even in that situation. In this connection, a possible alternative to the present rule on arrest jurisdiction in Article 21.2 would be simply to make reference to the Arrest Convention of 1999.

18. Certain terms used in Article 21.1 may, as suggested by the American delegation, have to be changed in view of the scope of the new Instrument. In place of loading and discharge one may perhaps talk about place of receipt and delivery, and it is necessary to be aware of any problems arising if (part of) the voyage is performed by a performing rather than by the contracting carrier.

19. The question may also be raised whether a provision along the lines of Article 21.1 of the Hamburg Rules, if it is thought that it is necessary to have one, should apply to all types of contracts of carriage by sea, or whether certain contracts are of a nature where such restrictions on the parties' freedom of contract are not necessary.

⁶ Sec UNCITRAL WP34 paragraph 30.

20. If the option for one or both parties to choose between certain jurisdiction where to institute proceedings is upheld, it must be decided whether it is a condition for the choice of an option that the jurisdiction is in an Instrument country, or whether, alternatively, there should be a provision to the effect that the Instrument must be applied to the proceedings. It may not be easy to ensure compliance with such a rule. On the other hand, it is difficult to see what is gained by a jurisdiction rule, if it is not combined with an assurance that the provisions of the Instrument are applied.

21. Article 21.4 contains a *lis pendens* rule giving priority to the first court seized. Article 31 of the CMR Convention in addition contains provisions on enforcement of judgments. Such provisions ought only to be applicable between States which are parties to the Convention, a condition which is not clear from the two Conventions, but which must be implied. If such rules shall be included in the Instrument, it is necessary to make more detailed provisions thereon. When is a court seized by an action, cf. Article 30 of the Brussels Regulation? What are the conditions for enforcement and the possibilities for the enforcing court to control the validity of the foreign judgment and the fulfilment of the conditions for its enforcement? A *lis pendens* rule may well be useful in a system as that of the Hamburg Rules. When both parties have a choice of jurisdictions, whether symmetric or asymmetric, the rush to the favourable forum (forum shopping) seems to necessitate it. At the same time, if the number of possible fora are restricted, provisions on enforcement of judgments seem necessary in order to ensure that the assets of the losing party, which may be in a different country, may be reached. It must be assumed that the restrictions with respect to jurisdiction do not prevent actions in non-Instrument countries where the losing party has assets.

22. If it is decided to permit choice of court agreements, the question arises of the validity of such agreements in respect of issues other than the question of their permissibility. Article 22 of the Hamburg Rules on arbitration agreements contains its own form requirement. The Hague draft convention on exclusive choice of court agreements also contains a provision on form and so does the New York Convention, 1958, on arbitration agreements. None of these texts regulate other validity issues than form, but leave them to the law of the forum or of the chosen court or the *lex arbitri* to regulate these issues. If enforcement provisions are included, reference may be made to the Hague draft which refers to the law of the chosen court, and to the New York Convention which refers to the law chosen by the parties and, failing such choice, to the *lex arbitri*.

23. It should be noted that members of the EU cannot individually join a convention which contains jurisdiction rules or rules on recognition and enforcement, cf. Article 71 of the Brussels Regulation.

24. In the light of the above, the following questions may be raised:

- a. Shall the Instrument contain jurisdiction rules, or shall the question of jurisdiction be left to national law?
- b. May the parties choose one or more fora as alternatives or to the exclusion of the otherwise competent fora?

- c. Is it a condition for going to a forum that it is situated in a convention country?
- d. Should the Instrument contain *lis pendens* rules and/or rules on recognition and enforcement of judgments?
- e. What is the effect of the jurisdiction rules, if there are assets of the losing party in a country that does not have jurisdiction (because of the jurisdiction rules of the Instrument or because the country is not a party to the Instrument) and does not enforce the judgment, either because it is not a party to the Instrument or the Instrument does not contain enforcement rules, and the country where the assets are situated does not enforce the judgment under some other convention or its own law?

Arbitration

25. Both Article 22 of the Hamburg Rules and Article 33 of the CMR Convention permit arbitration agreements. The CMR Convention only requires application by the arbitrators of the Convention. The Hamburg Rules also contain conditions relating to the seat or place of arbitration.

26. It is a question what purpose is pursued in Article 22 of the Hamburg Rules with restricting the parties' choice of seat of the arbitration and, in particular, whether those restrictions are reasonable. Probably, the provision is drafted simply as a parallel to the jurisdiction rule in Article 21, without, however, permitting arbitration to take place in the country of arrest.

27. When agreeing on arbitration, parties often go for a neutral place or a place with a tradition and a well developed system of arbitration. If one party has more weight than the other he may insist on arbitration in his home country. Very often, the choice of seat is combined with an agreement to submit the arbitration to the rules of an arbitration institution, either one specialising in the country in question or one of the recognised international institutions, such as the International Chamber of Commerce, the London Court of International Arbitration or the International Centre of Dispute Resolution (American Arbitration Association).

28. If it is the purpose with Article 22, as it probably is with Article 21, to protect the cargo-owner, and it is assumed that in the majority of cases the defendant/respondent will be the shipowner/carrier, it seems strange to have as the principal rule the carrier's home country. At the same time, the rule permits the carrier, when he is the claimant, to choose arbitration in his own country. The parties may agree on a place of arbitration, but only as an option, not as an exclusive forum.

29. If it is found that restrictions on the choice of seat of the arbitration must be retained and that options must exist, the cargo-owner might be given the choice of his own or the carrier's place of business and any other place designated by the parties; and the carrier might have the choice between the cargo-owner's place of business and any place designated by the parties. However, that does not guarantee a good choice from an arbitration point of view. The Instrument does not regulate the applicable arbitration law but only

the substantive maritime law. The choice of a particular seat of arbitration does not ensure the application of the Instrument. That may be done by a rule corresponding to Article 22.4. It seems, therefore, that a rule like Article 22.3 could be omitted like it is in Article 33 of the CMR Convention.

30. With respect to the validity of an arbitration agreement, Article 22 provides that it must be evidenced in writing. In principle, it could be left to the otherwise applicable law, including the New York Convention, to regulate any form requirements as well as any other rules about validity. If it is felt that the Convention should contain a form rule, the present rule should be modernized to include besides writing “any other means of communication which renders information accessible so as to be usable for subsequent reference”.

31. The provisions of Article 22 paragraphs 2 about the application of an arbitration clause in a charter-party to a bill of lading, 4 about choice of law, 5 about presumption about inclusion in the arbitration agreement, and 6 about agreements made after the claim has arisen, should be included also in the new Convention.

32. In the light of the above, the following questions may be raised:

- Shall the Instrument contain arbitration rules, or shall the question of arbitration be left to national law?
- Shall the Instrument regulate the seat of arbitration or only the applicable law?
- If the Instrument shall regulate the seat of arbitration, may the parties choose an exclusive seat among the permissible seats?
- Must the seat be situated in a Convention country?
- Should the Instrument regulate the form of an arbitration agreement or could that be left to the applicable law?

BACKGROUND PAPER ON DELIVERY TO THE CONSIGNEE (CHAPTER 10)

GERTJAN VAN DER ZIEL

1. Introduction

The existing maritime conventions do not deal with delivery of the goods by the carrier. UNCITRAL's brief to CMI was, however, to provide for uniformity on the rights and obligations of the parties to the maritime transportation contract. And because delivery of the goods to a consignee is one of the essential obligations of a carrier, the draft has to include this subject. In addition, the issue of delivery raises many practical problems, which in itself is a further reason for attempting to draft some uniform rules on matters of delivery.

The rules on delivery are in Chapter 10 of the draft, the articles 46 to 52. But also the provisions in article 7 relating to the period of responsibility of the carrier and article 11.2 relating to, amongst others, 'free in / free out', may affect the scope of the contract and, therefore, the subject of delivery. In this paper I will deal with these provisions first.

For easy reference, the draft of all these provisions are included in this background paper.

2. Article 7.3: the end of the carrier's responsibility under the contract

7.3 The time and location of delivery of the goods is the time and location agreed in the contract of carriage, or, failing any specific provision relating to the delivery of the goods in such contract, the time and location that is in accordance with the customs, practices, or usages in the trade. In the absence of any such specific provision in the contract of carriage or of such customs, practices, or usages, the time and location of delivery is that of the discharge or unloading of the goods from the final vessel or vehicle in which they are carried under the contract of carriage.

Delivery marks the end of the carrier's responsibility. However, a definition of delivery is not that easy. Some jurisdictions require some act of actual receipt by the consignee; others regard the placing of the goods at the free disposal of the consignee as delivery. Such placing at one's disposal may be done actually or through documents, such as a delivery order. In this respect, a lot of variations are possible. Therefore, the draft avoids a definition of delivery. It just defines the end of the period of responsibility of the carrier.

Such is in principle a contractual affair: decisive is what the parties have agreed to be the delivery. As an example: if the contract of carriage includes

a provision “*the consignee shall accept the goods alongside the vessel as fast as she can deliver*”, the responsibility of the carrier (under the contract of carriage) ends when he has placed the goods on the quay. If no express or implied agreement has been made about the time and place of delivery, but certain customs, practices or usages of the trade at the place of destination exists, then such customs, practices or usages apply. If no agreement, customs, practices or usages are applicable, a general fall back provision applies. In such case the actual discharge or unloading of the goods from the final vessel or vehicle in which they are carried is the relevant time and place of delivery.

One of the consequences of this approach is that the classic “tackle-to-tackle” clause no longer refers to an exclusion of liability for the carrier, but has to be redrafted somewhat because under this article 7.3 it has to refer to the scope of the contract.

Only a preliminary discussion on this provision has taken place within the Working Group yet. The critical view was that the concept of custody had prevailed in transport conventions relating to other modes and that same should occur within the context of this instrument as well. The commercial flexibility as provided for in the draft might be reason for concern. Others, however, pointed out that the specific characteristics of maritime transport require a certain flexibility, which had been recognised in the corresponding provision of the Hamburg Rules as well. Why shouldn't the parties themselves decide on the scope of their contract?

3. Article 11 and delivery under fio(s) clauses

11.1 The carrier shall during the period of its responsibility as defined in article 7, and subject to article 7, properly and carefully load, handle, stow, carry, keep, care for and discharge the goods.

[11.2 The parties may agree that certain of the functions referred to in paragraph 1 shall be performed by or on behalf of the shipper, the controlling party or the consignee. Such an agreement must be referred to in the contract particulars.]

Article 11.2 provides for a certain contractual freedom as to matters who should do what within the context of a contract for maritime carriage. In particular, this freedom is relevant where FIO(S) clauses are agreed. Despite the widespread FIO(S) practice in some sectors of maritime carriage, the existing maritime transport conventions (unlike inland transport conventions, such as CNMI, CMR and COTIF) include loading and discharging as the (automatic) duties of the carrier. The law is here on strained terms with the practice.

Solutions for this problem differ in various jurisdictions. Some adhere to the theory that a FIO(S) clause determines the scope of the voyage. Then, delivery of the goods is deemed to take place on board of the vessel. Other jurisdictions rely on the ‘act or omission of the shipper’ exception in order to relieve the carrier from the consequences of improper stowage of the cargo.

Also the view exists that FIO(S) clause have to be regarded as relating to the costs of loading, stowing, etc. only without having an impact on the carrier's liability. This legal uncertainty is aggravated when the FIO(S) clause itself is not clear, resulting sometimes that within one jurisdiction different judges arrive at different conclusions.

The draft attempts to create some uniformity by providing in article 11.1 that loading, stowing etc. is a carrier's duty within the period of his responsibility. Subsequently, article 11.2 states that FIO(S) clauses are allowed and must be regarded as an exception to this duty of the carrier. The consequence of these provisions is that loading, stowing etc. is placed within the boundaries of the contract of carriage and, therefore, under the convention. A FIO(S) clause as such may no longer determine the time of receipt or delivery of the goods. It means that loading, stowage, etc. is without prejudice to all other obligations of the carrier, such as his due diligence obligation. The further consequences of a FIO(S) clause will depend on its construction. If it is the intention of the parties that the clause makes the cargo side responsible for loading, stowage, etc., a carrier may be relieved from liability for the consequences of improper stowage, but only within the scope of the liability system outlined in article 11. In this article the 'act or omission of the shipper' exception is retained, but this exception operates now within the context of another division of the burden of proof between the carrier and the claimant than under the Hague-Visby Rules.

The UNCITRAL Working Group had clearly some difficulties with article 11.2. Its main concern was the possibility of an undue diminishing of the liability of the carrier. Therefore, suggestions were made that the standard interpretation of a FIO(S) notation should be that it only affects costs and not the carrier's liability. For the time being the whole article 11.2 was put between brackets as an indication "that the concept had to be reconsidered, including as to how it related to the provisions on the liability of the carrier". Further, it was felt that it would be helpful if written information from the industry about the practice of FIO(S) clauses could be given.

4. General introduction to articles 46 to 52

These articles do not pretend to provide solutions for all possible problems connected with delivery. They focus on the main problem, namely that the goods arrive at their place of destination without someone there to receive them or the consignee being unwilling to take delivery of the goods. What is in such cases the legal position of the carrier and the consignee?

5. Article 46 and 47: the duty of the consignee to accept delivery

46 When the goods have arrived at their destination, the consignee [that exercises any of its rights under the contract of carriage] shall accept delivery of the goods at the time and location mentioned in article 7.3. [If the consignee, in breach of this obligation, leaves the goods in the custody of the carrier or the performing party, the carrier or performing party will act in respect of the goods as an agent of the consignee, but

without any liability for loss or damage to these goods, unless the loss or damage results from a personal act or omission of the carrier [or of the performing party] done with the intent to cause such loss or damage, or recklessly, with the knowledge that such loss or damage probably would result.]

Pursuant to article 10 the carrier is obliged to deliver the goods to the consignee. And article 1 (i) defines the consignee as the person entitled to take delivery of the goods. This leaves the problem to what extent a consignee should be allowed *not* to take delivery. As to this question the draft provides that only the consignee who is not actively involved in the carriage, may not take delivery. As soon as he becomes active, he must take delivery indeed. This applies even if a consignee takes samples of the goods and subsequently decides to reject them under the contract of sale. In line with art 86 of the Vienna Sales Convention such consignee when taking delivery from the carrier does so on behalf of the seller. The inactive consignee, such as a bank holding a bill of lading as security, is under no obligation to take delivery itself, but may have to take action under article 48 or 49.

The Working Group was generally in support of this provision. However, there were also suggestions to make the obligation of the consignee to take delivery unconditional. Also, the liability part of the provisions raised some concern. First, the concept of agency might not be appropriate in this respect and, second, the level of liability of the carrier might be too unbalanced in favour of the carrier

47 On request of the carrier or the performing party that delivers the goods, the consignee shall confirm delivery of the goods by the carrier or the performing party in the manner that is customary at the place of destination.

The substance of this provision is not controversial and was acceptable by the Working Group.

6. Article 48: delivery when there is no negotiable transport document/electronic record

48 If no negotiable transport document or no negotiable electronic record has been issued:

(a) If the name and address of the consignee is not mentioned in the contract particulars the controlling party shall advise the carrier thereof, prior to or upon the arrival of the goods at the place of destination;

(b) The carrier shall deliver the goods at the time and location mentioned in article 7 (3) to the consignee upon the consignee's production of proper identification. (variant 1: As a requisite for delivery, the consignee shall produce proper delivery.) (variant 2: The carrier may refuse delivery if the consignee does not produce proper identification.)

(c) If the consignee does not claim delivery of the goods from the carrier after their arrival at the place of destination, the carrier shall advise the controlling party or, if it after reasonable effort, is unable to identify the controlling party, the shipper, accordingly. In such event such controlling party or shipper shall give instructions in respect of delivery of the goods. If the carrier is unable, after reasonable effort to identify and find the controlling party or the shipper, then the person mentioned in article 37 shall be deemed to be the shipper for purposes of this paragraph.

This article applies when no negotiable document has been issued, or, for instance in e-commerce situations, when no document at all is used. It sets out the principle that it is the obligation of the controlling party (which in these situations often will be the shipper) to secure that the carrier is able to deliver the goods. This principle was endorsed by the Working Group.

Some discussion took place whether a carrier, who is under the obligation to deliver pursuant article 10, could refuse delivery if the consignee claiming delivery could not produce adequate identification. The draft was considered unclear at this point and the UNCITRAL secretariat made two variations that may solve this question.

7. Article 49: delivery when a negotiable transport document/electronic record has been issued

49 If a negotiable transport document or a negotiable electronic record has been issued, the following provisions shall apply:

- (a) (i) Without prejudice to article 46 the holder of a negotiable transport document is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods at the time and location mentioned in article 7(3) to such holder upon surrender of the negotiable transport document. In the event that more than one original of the negotiable transport document has been issued, the surrender of one original will suffice and the other originals will cease to have any effect or validity.*
- (ii) Without prejudice to article 46 the holder of a negotiable electronic record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods at the time and location mentioned in article 7(3) to such holder if it demonstrates in accordance with the rules of procedure mentioned in article 6 that it is the holder of the electronic record. Upon such delivery, the electronic record will cease to have any effect or validity.*

The problem is here with the negotiable bill of lading. This document provides security to its holder by granting him the exclusive right to take delivery of the goods at the place of destination. And it provides security to

the carrier that, if he delivers the goods to the bill of lading holder, he is discharged from his obligation to deliver. However, these key functions of the document can only be fulfilled if it is available at the place of destination. If the document is not available, both parties may feel insecure.

To provide for a solution the draft starts to state in this paragraph that the bill of lading holder is entitled, but not obliged, to take delivery against presentation of the bill of lading. And in such case the carrier is obliged to deliver. This follows the normal practice of today. The next paragraph continues with a new provision.

(b) If the holder does not claim delivery of the goods from the carrier after their arrival at the place of destination, the carrier shall advise the controlling party or, if it, after reasonable effort, is unable to identify or find the controlling party, the shipper, accordingly. In such event such controlling party or shipper shall give the carrier instructions in respect of the delivery of the goods. If the carrier is unable, after reasonable effort, to identify and find the controlling party or the shipper, then the person mentioned in article 31 shall be deemed to be the shipper for purposes of this paragraph.

When the bill of lading is not available at the place of destination of the goods, or the bill of lading holder does not want to take delivery, the same principle as under the previous article applies: it is the duty of, in principle, the controlling party to take care that the carrier will be able to perform his obligation under the contract of carriage to deliver the goods. He is the party interested in the goods and it may be required from him that he protects his interests. It may be that the controlling party does not establish contact with the carrier and/or cannot be traced by the carrier. In such event the shipper, being the original contractual counterpart of the carrier, has to assume the responsibility of advising the carrier about delivery. He has to find the right person to whom delivery should be made.

(c) [Notwithstanding the provision of paragraph (d) of this article,] a carrier that delivers the goods upon instruction of the controlling party or the shipper in accordance with paragraph (b) of this article, shall be discharged from its obligation to deliver the goods under the contract of carriage [to the holder], irrespective of whether the negotiable transport document has been surrendered to it, or the person claiming delivery under a negotiable electronic record has demonstrated, in accordance with the rules of procedure referred to in article 6, that it is the holder.

When the carrier delivers upon instruction of, in principle, the controlling party, he is discharged from his obligation under the contract of carriage to deliver to the consignee. However, if the bill of lading holder cannot be traced in which event the shipper instructs the carrier about the delivery, it may be expected that the bill of lading will not be presented. Then, the question arises what rights are connected to such bill of lading after delivery of the goods by the carrier. This matter is dealt with in the next paragraph.

(d) [Except as provided in paragraph (c) above] If the delivery of the goods by the carrier at the place of destination takes place without the negotiable transport document being surrendered to the carrier or without the demonstration referred to in paragraph (a) (ii) above, a holder who becomes a holder after the carrier has delivered the goods to the consignee or to a person entitled to these goods pursuant to any contractual or other arrangement other than the contract of carriage will only acquire rights [against the carrier] under the contract of carriage if the passing of the negotiable transport document or negotiable electronic record was effected in pursuance of contractual or other arrangements made before such delivery of the goods, unless such holder at the time it became holder did not have or could not reasonably have had knowledge of such delivery. [This paragraph does not apply where the goods are delivered by the carrier pursuant to paragraph (c) above.]

This paragraph deals with two situations. The one is the event that there is a bill of lading holder who acquired the bill of lading after delivery was made by the carrier, but pursuant to a contractual arrangement other than the contract of carriage and made before delivery. A typical example of such person is an intermediate buyer in a string of buyers and sellers where the bill of lading goes too slow through the string for being in time available at the place of destination. If such intermediate buyer becomes bill of lading holder after the carrier has delivered the goods to the final buyer, he has no right to delivery anymore, but may have acquired a right to sue the carrier if there is a liability of the carrier for loss or damage to the goods.

The other situation is that an 'innocent' party, someone, who did not have or could reasonably not have knowledge of the delivery, has acquired the bill of lading in good faith. He is protected and may rely on the contents of the bill of lading, including the right of delivery of the goods. A typical example isn't easy to give because, when all parties involved in a commercial transaction act diligently (and honestly), arguably, this situation should not occur. But, obviously, it should not be excluded either, reason why it is taken care of in the draft. In the Working Group some concern was raised that this paragraph is insufficiently clear. Therefore, drafting has to be refined further. Also the relation between this paragraph and the previous one must be clarified.

(e) If the controlling party or the shipper does not give the carrier adequate instructions as to the delivery of the goods [or in cases where the controlling party or the shipper cannot be found], the carrier is entitled, without prejudice to any other remedies that the carrier may have against such controlling party or shipper, to exercise its rights under articles 50, 51 and 52.

This final paragraph was generally acceptable by the Working Group.

Article 49 as a whole received the general support of the UNCITRAL Working Group. It was convinced that the problem of delivery without presentation of a bill of lading deserves a solution. Trade practices have weakened the bill of lading system and an attempt for repair should be made,

such in the interest of the carriers as well as the cargo side. However, a note of caution was raised that the balance of the different rights and obligations requires a careful examination in order to strike the right one and to reach workable solutions.

8. Articles 50 to 52: general fall back provisions

50 1. *If the goods have arrived at the place of destination and*
 (a) the goods are not actually taken over by the consignee at the
 time and location mentioned in article 7(3) [and no express or
 implied contract has been concluded between the carrier or the
 performing party and the consignee that succeeds to the contract
 of carriage]; or

(b) the carrier is not allowed under applicable law or regulations
 to deliver the goods to the consignee,
 then the carrier is entitled to exercise the rights and remedies
 mentioned in paragraph (2).

2. *Under the circumstances specified in paragraph (1), the carrier is*
entitled, at the risk and account and at the expense of the person entitled
to the goods, to exercise some or all of the following rights and remedies:

(a) to store the goods at any suitable place;

(b) to unpack the goods if they are packed in containers, or to act
 otherwise in respect of the goods as, in the opinion of the carrier,
 circumstances reasonably may require; or

(c) to cause the goods to be sold in accordance with the practices,
 or the requirements under the law or regulations, of the place
 where the goods are located at the time.

3. *If the goods are sold under paragraph 2(c), the carrier may deduct*
from the proceeds of the sale the amount necessary to

(a) pay or reimburse any costs incurred in respect of the goods;
 and

(b) pay or reimburse the carrier any other amounts that are
 referred to in article 45(1) and that are due to the carrier.

Subject to these deductions, the carrier shall hold the proceeds of the
sale for the benefit of the person entitled to the goods.

From the initial CMI questionnaire it appeared that all national laws of the replying associations have similar provision in some form or another. Also the UNCITRAL Working Group supported fully the principle of this provision. Some delegates, however, found the phrase between brackets somewhat confusing.

51 *The carrier is only allowed to exercise the right referred to in article*
46 after it has given a reasonable advance notice to the person stated in
the contract particulars as the person to be notified of the arrival of the
goods at the place of destination, if any, or to the consignee, or otherwise
to the controlling party or the shipper that the goods have arrived at the
place of destination.

Here the notify party receives a legal right. Some delegates suggested that the carrier should wait for a response before exercising its rights under article 51.

52 When exercising its rights referred to in article 50(2), the carrier or performing party shall be liable for loss or damage to these goods, only if the loss or damage results from [an act or omission of the carrier or of the performing party done with the intent to cause such loss or damage, or recklessly, with the knowledge that such loss or damage probably would result].

The major part of this provision is put between brackets because the Working Group wants a further discussion on the appropriate level of liability of the carrier.

REPORT ON IMPLEMENTATION OF ELECTRONIC COMMERCE AND TRANSPORT DOCUMENTS IN IBERO-AMERICAN COUNTRIES

LUIS COVA ARRIA*

The objective of this short paper¹ is to present a report on the implementation of electronic commerce and transport documents in Ibero-American countries in order to show the effort being made by those countries to ensure that the CMI/UNCITRAL draft instrument on transport law works, whether the transport contract is on paper or in electronic form.

As you know, it was resolved at the CMI Assembly in Singapore that the ISC should complete the Outline Instrument to include principles and provisions to facilitate the needs of electronic commerce. The preliminary draft was reviewed by the CMI Working Group on Electronic Commerce and the draft instrument sent to UNCITRAL incorporates the provisions recommended by the CMI EC Group. It was mentioned in the draft instrument sent to UNCITRAL that it should apply to all contracts of carriage, including those which are concluded electronically and that the Instrument must be medium-neutral and technology-neutral so it should be adaptable to all types of systems, not only those based on a registry, such as the Bill of Lading for Europe (BOLERO). It was also mentioned that it should apply to systems operating in a closed environment (such as an intranet), as well as to those operating in an open environment (such as the Internet) and that care should also be taken to ensure that the instrument is not limited to the technology currently in use, bearing in mind that technology evolves rapidly and that what seems impossible today is probably already being planned by computer system (software) programmers. Finally, it was noted that one of the aims of the draft instrument is to remove the “paper obstacle” to electronic transactions by adopting the relevant principles of the UNCITRAL Model Law on Electronic Commerce of 1996.

In the context of the preparation of a draft international instrument on the

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¹ This paper is an updated version of the presentation held by the author at the Bordeaux CMI Colloquium, 10 to 13 June 2003.

international carriage of goods [by sea], the UNCITRAL Secretariat, in August 2002, circulated to interested non-governmental organizations a short questionnaire for the purpose of gathering information regarding the practice of containerized transport and the utilization of door-to-door contracts by carriers.² This questionnaire did not include any questions with regard to implementation of electronic commerce and transport documents. However, the last question asked for further comments or observations with respect to the instrument as currently drafted by UNCITRAL.

The Andean Community countries sent their answers to UNCITRAL and only Ecuador and Venezuela in their final comments made some observations regarding electronic commerce and transport documents. In this context those countries sent the following remarks:

Ecuador, mentioned that contracts of carriage by sea may also be concluded electronically and suggested that the word “images” in the CMI/UNCITRAL draft should be replaced with the phrase “means or records” to make it consistent with the correct international nomenclature.

Venezuela, suggested that the CMI/UNCITRAL draft instrument should apply to all contracts of carriage, including those which are concluded electronically. It observed that the Instrument must be medium-neutral and technology-neutral so as to be adaptable to all types of systems, not only those based on a registry. Also Venezuela pointed out that it must be applicable to systems operating in a closed environment (such as an intranet), as well as to those operating in an open environment (such as the Internet).

With regard to the definition of the word “document”, Venezuela suggested to include information recorded or archived in any medium which would cover information kept in electronic form as if it were in writing on paper. It also observed that the expression “electronic record” is a neutral one. Another matter suggested by Venezuela was the concept of exclusive control of the electronic record, which should be consistent with the concept of negotiability, in a way to put electronic records on an equal footing with non-electronic records. The central focus should be on the transfer of rights (the right to obtain delivery or the right of control) in a contract of carriage without documentation so the draft instrument must ensure that nothing prevents the use of electronic records to evidence such contracts of carriage in the future. These rules are consistent with the UNCITRAL Model Laws on Electronic Commerce (1996) and Electronic Signatures (2001), which, to some extent, provided the basis for the Venezuelan Act on Data Messages and Digital Signatures. Only if the validity of documents transmitted electronically is recognized will it be possible to overcome the legal obstacles to implementing electronic commerce in countries where records are traditionally kept in writing, such as Venezuela. Venezuela, therefore, approves the rules on

² Responses to the questionnaire received from non-governmental organizations are reproduced in UNCITRAL's document A/CN.9/WG.III/WP.28.

electronic commerce contained in the draft CMI/UNCITRAL Instrument.

In preparation of this report, this Rapporteur as Deputy Chairman of the CMI E-commerce Group and Executive Counselor in charge of liaison with Central and South America and Caribbean (Spanish speaking) National Associations, circulated a short questionnaire intended to gather information regarding the laws and practice of e-commerce and particularly in the utilization of transport documents on electronic form.

The only Ibero-American MLA's which sent their replies to the questionnaire were *Argentina, Ecuador, Dominican Republic, Netherlands Antilles, Portugal and Spain*. For those countries whose MLA did not send a reply we researched their national laws on the subject using government web pages.

The main feature of the Ibero-American laws on electronic commerce, data messages and digital signatures is that the UNCITRAL Model Laws on Electronic Commerce (1996) and Electronic Signatures (2001), to some extent, provide the basis for such laws but, with few exceptions, do not provide rules on carriage of good and transport documents.

The following is a summary of the responses, comments and contributions received from those National Associations:

Argentina

On November 14, 2001 the "Digital Signature Law" was approved. This law contained rules drafted in accordance with UNCITRAL Model Law on Electronic Signatures but did not adopt the UNCITRAL Model Law on Electronic Commerce and did not contain provisions on carriage of goods.

Article 3 of Digital Signature law establishes: "When the law requires a hand written signature, that requirement is also satisfied by a digital signature. That principle is applicable when the law establishes the obligation of signing or prescribes consequences for its absence."

There has not been any implementation in Argentina for the use of transport electronics documents in a practical manner.

Brazil

In Brazil, there is a law dated 13/07/2001, which establishes the requirements for contracts of services of digital certification for Federal Public Agencies. Also there is a law dated 18/10/2000, which creates the Electronic Government's Executive Committee.

Both laws only regulate governmental aspects of electronic trade. These laws do not refer to private e-commerce. There is a draft law on electronic commerce which, as well as article 1 of UNCITRAL Model Law, establishes as sphere of application to any kind of information in the form of a data message used in the context of commercial activities. Also there is a draft law on legal validity of electronic documents and digital signature.

There has not been any implementation in Brazil for the use of transport of electronic documents in a practical manner.

Bolivia

In Bolivia, there is a draft law for an Electronic Government System which will be the legal basis for allowing the Government to offer services and information using new technologies.

Chile

In Chile, a law called “Electronic Signature Law” is in force. The objective of this law is to regulate the electronic signature and to give legal validity and certainty to electronic communications.

This law takes into consideration the findings of the working group on e-commerce of UNCITRAL but is not entirely based on the Model Law for electronic signatures.

This law doesn’t contain rules for carriage of goods or transport documents.

Costa Rica

Costa Rica has only a draft law on digital signature dated February 22, 2000. Article 1 of this draft establishes that its objective is to regulate the use and the recognition of the digital signature.

Colombia

Colombia, was the first Latin-American country to enact a law based on the UNCITRAL Model Law. This law called “Electronic Commerce and Digital Signature Law” has been in force since 1999 and contains the same rules for carriage of goods based on Part two of the UNCITRAL Model Law on Electronic Commerce (articles 16 and 17).

Dominican Republic

The Dominican Republic has an “Electronic Commerce and Digital Signatures Law” based on Uncitral Model Laws which includes rules relating to carriage of goods and transport documents based on articles 16 and 17 of the Uncitral Model Law on electronic commerce.

Ecuador

On April 2002, Ecuador approved the “Electronic Commerce, Signatures and Data Message Law”, which is based on the UNCITRAL Model Law on Electronic Commerce. This law does not contain provisions on carriage of goods or transport documents. On December 31, 2002, was approved a regulation of this law.

Ecuador has implemented the use of electronic documents in customs operations with a pilot program beginning in March 2002. The Port Authority and Line Ships currently issue bills of lading on an electronic form.

Guatemala

Guatemala only has a draft law dealing with electronic commerce and digital signatures based on the UNCITRAL Model Law, as well as the laws approved in Colombia, Chile, Argentina, Germany and Italy. Chapter IV of this draft includes provisions related to the carriage of goods and transport documents based on articles 16 and 17 of the UNCITRAL Model Law on Electronic Commerce.

Mexico

Mexico has an Electronic Commerce Law based on the UNCITRAL Model Law on e-commerce. Chapter II of such law provides rules for carriage of goods and transport documents based on articles 16 and 17 of the UNCITRAL Model Law.

Netherland Antilles

The Netherlands Antilles MLA replied to the questionnaire even though it is not a Caribbean Spanish-speaking country. We appreciate their reply.

In the Netherlands Antilles a law that regulates the electronic commerce has been in force since January 2001. It is based on the UNCITRAL Model Law but does not have articles dealing with carriage of goods or transport documents.

There has not been any implementation in the Netherlands Antilles for the use of transport electronic documents in a practical manner.

Panama

Panama has a Law for Digital Documents and Signatures dated June 28, 2001, based on the UNCITRAL Model Law on Digital Signatures. It does not contain rules relating to carriage of goods or transport documents.

Peru

Peru has a law dated 2000 on Electronic Contracts which modifies certain rules of the Civil Code regarding contracts.

Peru also has a digital signatures and certificate law dated May 2000. The objective of these laws is to regulate the use of the electronic signature giving the same validity and effectiveness of a hand written signature.

It doesn't contain rules relating to carriage of goods or transport documents.

Portugal

Portugal has two separate laws on electronic commerce and digital signature. These laws are in harmony with the European Union regulation of this area. However, these laws do not contain rules relating to carriage of goods or transport documents and are not based on UNCITRAL Model Laws.

Spain

In Spain, Law 34/2002 of 11/07/2002, entitled the Law of Information Society Services and Electronic Commerce, incorporates Directive 2000/31/EC of 8 June 2000 of the European Parliament and of the Council on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('the Directive on Electronic Commerce'). It also incorporates Directive 98/27/EC of 19 May 1998 of the European Parliament and of the Council on injunctions for the protection of the interests of consumers.

Also in Spain there is a Royal Decree on Electronic Signatures (14/1999) dated 17 September 1999. That Decree incorporated Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures. Ratification of this Royal Decree by the Congress of Deputies opened the way for it to be subjected to parliamentary scrutiny and for its text to be finalised. The present situation is that there is a draft Electronic Signatures Law.

These laws do not contain rules relating to the carriage of goods or to transport documents.

Although the Spanish e-commerce regulations are not based on the UNCITRAL Model Law, they do have their same principles of "functional - equivalent approach", "technology neutrality", "inalterability of the pre-existent rights", "good faith" and "party autonomy".

There has been no practical implementation in Spain so far of electronic documents in the area of transport.

Uruguay

Uruguay has a Law for Regulation of electronics procedures and administrative acts. This law does not include rules on private electronic commerce. There is a draft law on electronic signature.

Venezuela

The Data Message and Electronic Signatures Law dated February 2001 is, in part, based on UNCITRAL Model Laws, but does not contain rules for carriage of goods and transport documents.

Since January 2002, Venezuela has implemented the use of electronic documents for customs operations in the Port of La Guaira, and will be extending this to other ports within a period of two years.

Conclusion

Many Ibero-American countries have incorporated the UNCITRAL Model Laws, but among the sixteen countries identified in this paper, only four have included rules for carriage of goods and transport documents in their national laws on electronic commerce. It was determined that only a few Ibero-American countries have fully implemented the use of electronic transport documents, among them Venezuela and Ecuador.

Serious legal obstacles can be anticipated in those Ibero-American countries where there is not satisfactory legislation on dematerialized transport documents. These serious legal obstacles will likely occur in areas such as: (i) the satisfaction of writing and signing requirements: (ii) the probative effect of electronic communications and (iii) the determination of the place, date and hour of contractual formation.

Finally, there is no doubt that the new CMI/UNCITRAL draft instrument on transport law will be of importance in those Ibero-American countries in which an appropriate platform already supplements the rules of electronic commerce included in the CMI/UNCITRAL draft instrument.

**SUMMARY REPORT ON THE 13TH SESSION OF
UNCITRAL WORKING GROUP III (TRANSPORT LAW)
HELD IN NEW YORK 3RD – 14TH MAY 2004.**

1. Provisions Considered

The following articles of the Draft Instrument set out in A/CN.9/WGIII/WP.32 were considered:

Article 15.7 (renumbered 15.6 in A/CN.9/WGIII/WP.36)

It was decided that this provision should apply to both the contracting carrier (“the carrier”) and maritime performing parties and that the general principle on aggregate claims formulated in this provision was appropriate.

Article 16 Delay

The Working Group decided that the Draft Instrument should reflect the principle that the carrier should be liable for delay in delivery as currently provided in article 14.

Article 16.1

There was general support for the first sentence whereby the carrier should be liable for delay which would occur if the carrier did not deliver within the time expressly agreed in the contract. Discussion centered on the second sentence whereby the delay for which the carrier would be liable would include delay which would occur if the carrier did not deliver within “a reasonable time” having regard to the matters set out in that sentence. It was decided to include this provision without square brackets, although its precise wording may need to be discussed at a future session.

Article 16.2

There was wide support for limiting the carrier’s liability for consequential damages for delay. It was decided that the sum payable should be limited to the freight payable on the goods delayed and that a multiplier of 1, as opposed to 2.5 or 4, should be inserted in the square brackets at the end of the first sentence. It was also decided to add the words “unless otherwise agreed” in brackets at the beginning of the first sentence pending consideration of chapter 19 and the issue of freedom of contract.

Article 17 Calculation of Compensation

The substance of this article was approved.

Summary Report on the 13th Session of UNCITRAL Working Group III

*Article 18 Limits of Liability***18.1**

The text was generally acceptable and there was support for inclusion of a rapid amendment procedure. The secretariat was asked to draft provisions based on existing models.

18.2

The text would be maintained in square brackets with the inclusion of a reference to delay also in square brackets.

18.3

The substance of this paragraph was approved and it was noted that the definition of “container” in article 1(s) might need to be considered further.

18.4

The substance of this paragraph was approved.

Article 19 Loss of the right to limit liability.

It was decided that the limit for damages for delay as provided for in article 16.2 should in principle be breakable as provided in article 19, but that the mere intent to cause delay should be distinguished from intent to cause loss due to delay or to cause delay with knowledge that economic loss would probably result. The secretariat was asked to prepare a revised draft and the issue would be discussed further at a future session. Strong support was expressed for maintaining the reference to the personal act or omission of the person claiming a right to limit, to the exclusion of acts or omissions of the servants or agents of that person, and accordingly the word “personal” should be retained without square brackets.

Article 20 Notice of loss, damage or delay

It was decided that the original text, and a proposed redraft, with the inclusion of a seven day notice period, should be included in square brackets with some further drafting revisions.

Article 21 Non contractual claims

It was decided that “maritime” be inserted before “performing party”. Otherwise the substance of the provision was approved subject to the secretariat checking that it did not duplicate article 15.4

Article 22 Liability of the carrier

It was decided that the fire exception, as currently worded, would be maintained, that the exception of “saving or attempting to save life or property at sea” be revised to refer to reasonable measures to save or attempt to save property at sea and to avoid damage to the environment, and that the exception of perils, etc. of the sea or other navigable waters be approved. The secretariat was asked to prepare a revised draft merging the article with article 14.

Article 23 Deviation

It was decided that the current text would be placed in square brackets pending further discussion at a future session.

Article 24 Deck Cargo

Some revisions to the text of the article were decided upon, including replacing the word “containers: in article 24.1(b) with the words “containers fitted to carry cargo on deck” in square brackets. Paragraph 2 will be discussed in greater detail in conjunction with article 14.4 and paragraph 3 after discussion of the issues of third party rights and freedom of contract. Paragraph 4 is to be placed in square brackets, with additional square brackets placed around the words “that exclusively resulted from their carriage on deck” and around the word “exclusively”, and will be discussed again particularly with regard to its relationship with article 19.

CHAPTER 7 OBLIGATIONS OF THE SHIPPER

Article 25

It was decided that the current text of this article be maintained, subject to some possible redrafting by the secretariat.

Article 26

It was decided that the substance of this article be retained in chapter 7, including the reference to the request of the shipper triggering the obligation.

Article 27

It was decided that the current text of this article should be maintained with the addition of the words “unless the shipper may reasonably assume that such information is already known to the carrier” at the end of sub-paragraph (a).

Article 28

This article will be deleted and articles 26 and 27 amended to provide that the information, instructions and documents referred to in these articles be accurate and complete and provided in a timely manner. These amendments will be placed between square brackets.

Articles 29 and 30

It was decided that these articles be redrafted entirely to reflect the general principle that the liability of this shipper should be based on fault. Exceptions to that general principle should be made and a rule of strict liability retained in cases where the shipper failed to meet the requirements of article 27(b) and (c). These exceptions will be placed in square brackets. Paragraph 3 of variant B of article 29 should be retained pending further discussions. Notwithstanding a strong minority view which considered that the issue was properly dealt with by article 27, and urged reconsideration of the decision at a future meeting, it was decided that a specific provision be inserted to deal with dangerous goods. The shipper should be strictly liable for

Summary Report on the 13th Session of UNCITRAL Working Group III

insufficient or defective information regarding dangerous goods, which would be broadly defined and include goods that became dangerous during the carriage. The question of the carrier's liability will be considered in connection with article 4.

It was decided that a new article, as proposed by the United States in paragraphs 42 and 43 of A/CN.9/WGIII/WP.34, should be included in square brackets, possibly in chapter 5, reading:

“29 bis: A carrier is not liable for delay in delivery, loss of, or damage to or in connection with goods if the nature or value of the goods was materially misstated by the shipper knowingly and with an intent to deceive the carrier or any performing party.”

Article 31

It was decided that the general intention of article 31 was acceptable, but that the words “subject to the responsibilities and liabilities” be placed in square brackets along with the word “receives” to reflect concern that the word was imprecise and allowed too broad an interpretation of the provision.

Article 32

It was decided that the general structure of this article was acceptable and that the current text be maintained.

CHAPTER 9 FREIGHT

It was decided that this chapter be deleted as a chapter, but that article 43.2 and the first two sentences of article 44.1 be retained in square brackets for possible placement elsewhere in the Draft Instrument.

2. Provisions Not Considered

Although it was the intention at the conclusion of the twelfth session in Vienna that two days be devoted to discuss chapter 19 and the issue of freedom of contract, this discussion did not take place, largely, it is understood, because members of the delegation of China were unable to obtain visas to come to New York. China has submitted a proposal on this issue – A.CN.9/WGIII/WP.37 – and informal papers were circulated by the Nordic Countries (Denmark, Finland, Norway and Sweden) and by UNCTAD.

Switzerland presented an informal paper on the conflict of conventions (articles 83 and 84)

3. Future work and working methods

Concern was expressed by a number of delegations at the slow progress being made towards finalizing the Draft Instrument and the Working Group's methods of work. The Working Group consequently adopted the following tentative agenda for completion of its second reading of the Draft Instrument.

14th Session - Vienna 29 November – 10 December 2004

Liability of the carrier (articles, 14, 22 and 23)

Freedom of contract (articles 2, 88 and 89)

Jurisdiction and arbitration (articles 72 – 80 bis)

15th Session – New York Spring 2005

Transport documents/electronic commerce (articles 3 – 6 and 33 – 40)

Right of control and transfer of rights (articles 53 – 61)

Delivery of goods (articles 46 – 52)

Right and time of suit (articles 63 – 71)

Delivery of goods and right and time of suit will be reserve topics for Vienna.

An informal consultation group has been created, which will be coordinated by Sweden, with a view to accelerating the exchange of views, primarily by email, the formulation of proposals and the emergence of consensus in preparation for a third and final reading of the Draft Instrument. The group would be open to all interested delegations and observers.

There was general agreement that the issue of overall timing should be consistently borne in mind and periodically reassessed by the Working Group.

The full report of the 13th Session, which will be shorter than previous reports in order to comply with a directive from the Secretary General, will be published shortly on the UNCITRAL website.

14th May 2004

STUART BEARE

B. GENERAL AVERAGE

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POSITION OF A.I.D.E. ON THE EVENTUAL REVISION OF THE YORK-ANTWERP RULES 1994

Introduction

The Association Internationale de Dispatcheurs Européens (AIDE) brings together practicing members of the average adjusting profession, not only in Europe, but world-wide. In 1991, in anticipation of major proposals for the revision of the York-Antwerp Rules (subsequently adopted in 1994), AIDE passed a resolution defining its role as follows: -

“It was agreed that, as representing the profession of average adjusters, AIDE should continue to place its expertise at the disposal of those who will make the decisions as to what amendments, if any, should be adopted in the review of the York-Antwerp Rules and in other areas affecting the adjustment of general average. Any recommendations made by AIDE in this respect should have as their objective the maintenance of the principles of general average, the avoidance of ambiguity and the limitation of the areas of potential dispute.”

This role was taken up by an International Sub-Committee appointed by AIDE which thereafter, with CMI's full approval, shadowed the proposals made by various national Maritime Law Associations and also initiated a number of proposals of its own, all of which were debated at the Sydney Conference.

As in 1991, so in 2003, a programme was set up whereby:

1. the IUMI proposals were fully debated by the AIDE General Assembly in the light of the known views of shipowners (represented by ICS), charterers (represented by BIMCO), and other interests;
2. members were invited to express their own opinions without limitation on the future of General Average;
3. a committee was established to review the Report of the CMI International Sub Committee on General Average dated 19th December 2003 (the ISC Report), taking the whole of the foregoing into consideration

Comments on individual issues raised in the ISC Report are presented below. However, AIDE would stress that any changes which may be made in the substantive provisions in the YAR should carry the broad agreement of all parties; shipowners, cargo owners, charterers and their insurers. It should at all times be remembered that the success of the YAR depends upon their reflecting the will of the international maritime community, not the wishes of any one sectional interest, however dominant. Failure to maintain this consensus could be disastrous.

According to readily available Lloyd's Register and Norwegian sources, there were in 2003 just over 43,400 cargo vessels involved in world trade. Of these, approximately 49% were bulk carriers, tankers of all types, reefers etc., which generally carry cargoes involving a fairly limited number of interests, indeed very often a single one. However, only approximately 7% (2,956) of the world cargo fleet consisted of container vessels where the handling of general average procedures presents a particular difficulty, which is now largely overcome by the inclusion in hull insurances of general average absorption clauses.

Obviously these 40,000 or so vessels concern a very large number of Owners who may decide to ignore any amended York Antwerp Rules and use a wide variety of Bill of Lading provisions. As already mentioned, the maritime community would then be moving away from a large measure of uniformity and move towards chaotic diversity. It appears to be in the interest of all concerned that this be avoided.

The common safety / common benefit argument

At an early stage of this argument, IUMI contended that at some unspecified time in the past, allowances in General Average were deemed to terminate when ship and cargo had arrived in a position of common safety, the corollary being that it was only by virtue of YAR that allowances could be made for, e.g. wages and maintenance of crew whilst ship and cargo were in a port of refuge. Research by AIDE, among others, soon showed this argument to be totally flawed: in fact the Law Maritime, as interpreted in all countries other than the United Kingdom, recognised that the object of General Average was not merely the attainment of common safety wherever ship and cargo happened to be after an accident, but the completion in safety of the common maritime adventure.

Wages and maintenance of crew, etc. at a port of refuge

AIDE welcomes the amelioration of the position of IUMI on this issue but remains concerned regarding the proposals to amend Rule XI by excluding certain categories of costs, in particular the wages and maintenance of the vessel's crew, incurred during detention at a port of refuge. In this respect AIDE believes that the following factors deserve the careful consideration of Delegates:

- Although a shipowner may be compelled to continue to pay the crew during a general average detention, the value of the crew's services, in terms of contributing to the earnings of the vessel, is lost to him. The cost of paying the crew during a period of general average detention therefore represents a real cost to a shipowner and is distinguishable from a claim for loss of earnings, in any disguise, on that account.
- The wages and maintenance of the vessel's crew incurred putting into a port of refuge and during a period of detention there, has always been admitted as general average under the laws of all Civil Law countries and the U.S.A. The notable exception is, of course, the United Kingdom, for

the reasons examined in the preceding paragraph regarding the furtherance of the common maritime adventure.

AIDE has no comment to make at this time with regard to the draft amendments to Rule XI as set out in Annex B to the ISC Report, but will comment if this issue proceeds.

Temporary repairs

The ISC Report on this subject is admirably clear. AIDE has for many years participated in the search for a simple and equitable solution to the problem of whether and, if so, to what extent to allow in general average the cost of temporary repairs of accidental damage. For example:

1. There is a great deal to be said for allowing the cost of temporary repairs of accidental damage only when such repairs are essential to the continuance of the voyage, and there exists no possibility of effecting a permanent repair in the locality, i.e. when the only alternative would be the enforced (and therefore legal) abandonment of the voyage. This practice, pre-dating the York-Antwerp Rules, is an example of the "common safety" approach.
2. The present second paragraph of Rule XIV, based on the principle of "substituted expense", has its critics, but since the English law case of *The "Bijela"* there is no doubt that its application in practice is no longer limited to those cases where permanent repairs could have been effected at the port of refuge, as had previously been contended.
3. On the other hand, there are many practitioners who would be prepared to advocate the abolition of any allowance in general average for the cost of temporary repairs of accidental damage, provided that hull insurance markets could demonstrate uniformity in accepting the cost of such temporary repairs reasonably incurred, as forming a part of the measure of indemnity. AIDE recognises two sets of circumstances in which allowance of the cost of temporary repairs can be considered to be objectionable. Firstly, where permanent repairs are never carried out, and secondly, where the deferment of permanent repairs to a cheaper repair port is undertaken with the object of achieving a saving to the shipowner or his underwriters. In order to meet potential objections on these grounds, the ISC has set out a draft amendment in Annexe B to its report, based on the so-called "Baily Clause". At this stage AIDE is by no means convinced of the desirability of this amendment, but if after further debate it should appear that delegates wish it to be considered further, AIDE would respectfully suggest the following simplified wording for discussion:

"For the purposes of the second paragraph of this rule only, the cost of temporary repairs falling for consideration thereunder, shall be limited to the extent that the cost of temporary repairs effected at the port of loading, call or refuge together with the cost of permanent repairs

eventually effected exceeds the cost of permanent repairs had they been effected at the port of loading, call or refuge.”

Substituted expenses

When a ship with cargo has sustained a serious casualty which could involve a long delay on the voyage before the ship is repaired, it frequently happens that the most satisfactory solution to the problem, for all interests, is to complete the voyage by some other means, e.g. towing the ship with its cargo to destination, or transshipping the cargo and forwarding it in another bottom. Although these operations almost invariably result in considerable savings in expense to all parties, their cost is not allowable directly in general average; it can only be admitted *via* Rule F, the substituted expense route.

Under the present YAR substantial benefits accrue to all parties (proportionately to their values) by reason of substituting the cheaper and more expeditious cost for the more expensive course of action. Furthermore, the benefits are not only financial in the sense of affecting the amounts chargeable to the general average, they also include (for cargo interests) the safer and speedier delivery of their cargo.

In the opinion of AIDE, therefore, the proposal of IUMI to abolish substituted expense allowances under Rule F would have the most dire consequences, particularly for cargo owners and their insurers by closing off a useful and well-recognised means for the saving of both time and expense.

Redistribution of salvage charges

In this respect the following points should be borne in mind:

- (a) Salvage is the archetype of a general average expense.
- (b) In some countries, for example the Netherlands and Germany, the Shipowner is liable for the payment of the whole of the salvage charges.
- (c) Not infrequently, and independently from any legal obligation, the Shipowner provides security on behalf of all parties.
- (d) When some interests are in a stronger bargaining position than others, this may lead to inequity in the settlements made with salvors. Redistribution in General Average automatically corrects the inequity, and also acts as a disincentive to separate interests attempting to obtain this kind of unfair advantage.
- (e) Where there is a single cargo interest, and no other item of general average is involved, reapportionment of the salvage awards, *per se*, would admittedly not be required.

However it has to be borne in mind that when other items of sacrifice or expenditure are present, the mere exclusion of salvage charges from the general average would neither hasten nor simplify the adjustment, as salvage charges (together with interest and legal costs) would need to be taken into account in the calculation of contributory values.

Consequently, following the admirable practice that each case should be

treated on its own merits, rather than by a “rule of thumb”, AIDE suggests that should there be a strong call from delegations favouring the exclusion of salvage settlements from general average, then a practical solution should be found in preference to a theoretical one.

In such a practical solution AIDE envisages that where the parties to the common maritime adventure have all agreed in writing that settlements made with the salvors should not be disturbed, then the present rule as to the admission of such charges in general average should be reversed, otherwise no change. The following wording is submitted as an addition to the first paragraph of Rule VI (a):

“Notwithstanding the foregoing, where the parties have so specifically agreed in writing the cost of settlements made with the salvor(s) shall be excluded from general average.”

Of course it may be said that the parties are always at liberty, as between themselves, to vary the application of the YAR by special agreement, AIDE believes that recognition of this liberty within the text of Rule VI will encourage the parties to enter into such an agreement in appropriate cases.

Time bar

In the view of AIDE this is not a subject which fits happily within a set of contractual rules. Nevertheless, it is recognised that it may be convenient to have such a rule available when the applicable national law is non-mandatory or silent. However, AIDE is not happy with the drafting of the proposed new Rule XXIII, set out in Annexe B to the ISC Report, and submits the following:

“Rule XXIII. Prescription of Contributions in General Average.”

- (a) All rights to claim the balances due in general average shall be extinguished unless an action is brought by the claimant within one year after the date of the general average adjustment [or within six years from the date of termination of the adventure, whichever shall first occur].*
- (b) The foregoing shall apply in all cases save where governing national law provides specifically to the contrary”*

Interest

The ISC Report correctly identifies two problems relating to the allowance for interest on general average allowances:

1. the variation of bank and other prime rates of interest over periods of time (the time factor),
2. the variation between the rates applicable in different countries and currencies (the currency factor),

and has proposed a partial solution to the first of them, namely to provide for an annual review of the rate of interest fixed by Rule XXI of YAR.

Unfortunately this leaves the second problem unresolved. Although the

predominance of the United States dollar as an international commercial currency has led to its acceptance as the currency most frequently adopted for general average adjustment, there are instances when general average settlements have to be made in other currencies which are subject to severe inflation and widely varying rates of interest, as can be observed, for example, in certain South American countries from time to time.

AIDE has kept this subject under study for many years. It has recognised the interrelationship of the problems relating to the currency of adjustment, the rate of interest and the currency of settlement, and in its reports prior to the CMI Sydney Conference of 1994 it recommended:

- A. the SDR solution, or, failing that,
- B. the preparation of general average adjustments either in a currency selected by the parties, or where that was not possible *“in such currency or currencies as may be equitable in the interests of the parties, having regard to the currencies in which the major claimants in general average have sustained financial loss”*.

Recommendation A (the SDR solution) was adopted by the British MLA and although it received a considerable degree of support at the Sydney Conference, it failed to achieve the required majority.

Recommendation B, although not successful at Sydney, has become accepted adjusting practice.

AIDE does not understand why the suggestion that a formula be devised for a variable rate of interest linked to the LIBOR has been rejected as being “too complicated”. On the contrary, the LIBOR rate, which is based on not one, but a “basket” of stable currencies, is successfully used in a number of commercial contracts and in the Norwegian Insurance Market. By comparison with this proposal, AIDE considers the suggestion to refer the question of the rate of interest in general average adjustments annually to the Assembly of the CMI to be totally inappropriate, and the proposed guide lines for the determination of an annual rate to be unnecessarily cumbersome.

Commission

AIDE can confirm that the original motive for the allowance of commission was to encourage shipowners (and other parties) to make prompt payment of accounts due. In the USA, the practice (other than when YAR apply) is to allow commission on paid accounts at 2.5%.

It is also correct, as reported, that it is the practice to allow administrative charges, such as travel, communication expenses, and the cost of collecting general average security either on the evidence of actual vouchers or, where the examination of vouchers would involve an inordinate amount of time, on the basis of a considered estimate by the average adjuster.

In the opinion of AIDE, it is quite unnecessary to create a new provision in YAR to confirm a long-standing practice of this kind.

Tidying up the text of the yar

At this juncture AIDE has no comment to make on the changes proposed on this account.

However, AIDE would like to express its willingness to participate in the work allocated to any drafting committee that may be appointed at the Vancouver Conference.

Respectfully submitted,
Stefano Cavallo, President
Janusz Fedorowicz, Vice-President
Jean-François Chevreau
Michael D. Harvey
N. Geoffrey Hudson

4th May 2004.

POSITION PAPER BY THE INTERNATIONAL CHAMBER OF SHIPPING

Introduction

The purpose of this paper is to draw attention to the impending review and possible reform of the York-Antwerp Rules at the CMI conference in June, 2004. This reform movement has been headed by UK cargo insurers within IUMI who are keen to restrict the scope of General Average in a way that may threaten the working effectiveness of General Average and be to the disadvantage of shipowners by reducing amounts recoverable in general average and affect claims on hull insurers.

This paper reviews what general average is, its role in modern maritime commerce, the proposed changes, why these changes may not be welcomed and action to be taken to express views on this issue.

1. What is general average

General average is a method of allocating and spreading the costs of dealing with a maritime casualty among those parties who benefit by ship and cargo being saved.

The principle is said to be as old as the oldest commercial sea voyages. The modern system of determining the basis, apportionment and allowances in general average is set out in the York-Antwerp Rules (YAR), now under the custodianship of the Comité Maritime International (CMI). YAR were developed towards the end of the 19th century and have been revised at regular intervals (every 20 – 25 years on average) since then, most recently in 1994.

Claims in General Average fall into two categories:

- i) Losses and sacrifices for the common safety of ship, cargo and other property involved in the common maritime adventure; for example extinguishing damage to ship and cargo in a fire or salvage.
- ii) Expenses incurred for the common benefit to safely complete the voyage including those at ports of refuge such as cargo handling expenses, port dues, wages and maintenance and substituted expenses, but excluding the cost of repairing the accidental damage to the ship.

Since the early 19th century, English law and practice largely recognised only the common safety allowances as general average. European countries and the USA favoured the inclusion of claims for the common benefit.

There was a general concerted international effort to ensure a uniform approach which culminated in the York-Antwerp Rules 1890 that were used

in contracts of affreightment. These accepted in full the concept of the common benefit allowances in General Average.

General Average sacrifices and expenditure are borne by the different interests involved in the common maritime adventure *pro rata* to the value of the property saved.

2. Why should general average be preserved?

A long history is not itself sufficient reason. It is, nevertheless, testimony to the evolution of a system and its ability to develop to meet changing needs and reflect contemporary requirements.

General average is a very practical solution for sorting out distribution of losses following major maritime casualties. It is a system that is understood internationally and there is no point doing away with all or part of it. The recent lack of English case law on abandonment of the voyage is in no small part due to the way general average works in practice.

General average means that:

- action - often urgent in the circumstances - is not delayed, with the likelihood of even greater losses being incurred, by the need to start negotiations between different interests since the respective parties rights and obligations are already set out in clearly laid down rules;
 - thus, in the event of danger, the Master does not have to make an arbitrary choice between preserving the interests of the ship or some or all of the cargo;
 - the Master can therefore concentrate on the safe navigation and safety of the vessel, taking whatever decisions are necessary in the interests of all engaged in the maritime adventure; and
 - the Master's independence of action does not prejudice the interests of any one party since all contribute *pro rata* to their degree of loss.
- The system therefore represents an equitable means of rateable sharing.

3. Proposals for revision

The extent of general average allowances is a matter of fierce debate. Some underwriters claim that the definition should be given a narrow interpretation. This, they argue, will rein back the progressive extension in the scope of general average which has taken place over at least the last 100 years. On this view, expenses and sacrifices would be admissible only where made or incurred while ship and cargo are in the grip of peril.

The opposing view holds that this never has been the position and that these underwriters wish to revert back to an English law position which Lloyd's underwriters failed to persuade others of, most particularly in North America and continental Europe, when the York-Antwerp Rules were formulated in 1890. Furthermore they reject the idea that there has been any expansion in the scope of general average during this period.

The proponents of change seem to have recently indicated they are seeking more limited changes in particular:

- Removal of allowances for crew wages and maintenance at a port of refuge, as well as fuel and stores
- Alter the basis of temporary repair claims
- Exclude salvage
- Introduce a time limit for claims
- Abolish or alter the rate of interest
- Abolish commission on disbursements.

It is, however, unclear as to what level of change or amendment to the York- Antwerp Rules 1994 will actually be sought at the CMI conference in Vancouver in June, 2004.

Whether the conference entertains more radical reform or that of a more limited nature, it is difficult to foresee, but neither will be in the interests of shipowners.

Please see the CMI website www.comitemaritime.org for both sides of the debate encapsulated in the CMI working group's report on the subject.

4. Practical issues

Application of the narrow view would exclude many of the current allowances, particularly port or place of refuge expenses. There would be much greater argument on the extent of peril which would present the following problems:

- English law long ago decided that although the peril must be real it is not necessary that the ship should be actually in the grip, or even nearly in the grip, of the disaster that may arise from a danger. Are the proponents of the narrow view suggesting that only those acts undertaken during the actual peril - which might not be continuous - be allowable? How will this be assessed? If it is to be decided after the event, the Master will again be put in the position of having to take decisions which might later be viewed as partisan by one of the interests to the adventure; and
- How will peril itself be defined? It has been suggested that it should continue only until ship and cargo are in a condition of reasonable safety. How would such reasonable safety be assessed? A subjective test would undoubtedly be open to later challenge, thus undermining the precision of existing YAR provisions.

Restriction to the actual grip of peril would significantly curtail allowable recoveries. This might have a superficial attraction to cargo underwriters who have argued that the system is abused and sometimes used by less responsible operators as a low cost maintenance scheme. However, it would destroy the effectiveness of general average as a casualty management system understood by all parties in time of crisis. The following points need to be taken into consideration:

- elimination of port or place of refuge expenses might exclude cargo interests from having their goods forwarded to destination through the

General Average

system of substituted expenses. The owner of a vessel putting into port for repairs after a peril (however that is defined) is unlikely to be under any obligation to forward cargo and, depending on its position in the stow, could be expected to be reluctant, or even unable, to discharge the vessel in whole or in part. Goods would have to remain onboard pending repairs. Cargo would be unlikely to have any recourse under the contract of carriage;

- if expenses such as cargo handling are no longer dealt with as general average, many of them will fall on the shipowner and, in some instances, on the hull insurers. Such costs falling on the owner can be added to repair costs. The ratio between repair costs and the sound value of vessels would be likely to increase the number of abandoned voyages. Cargo would have to deal as best it could with forwarding goods, and would probably be responsible for the resulting costs;
- additional procedural changes introduce complications with a new set of Rules. The 1994 Rules have by no means supplanted the 1974 Rules. No one needs an additional set of Rules in 2004 to further complicate issues.
- removal of the port of refuge expenses such as crew wages, fuel, etc reduces the working effectiveness of General Average as a casualty management system. Moreover if not general average, then these are unlikely to be recoverable from hull insurers.
- cargo underwriters argue that they pay the larger proportion of a general average settlement since the total value of the cargo invariably exceeds the value of the ship. However:
 - shippers have benefited from the economies of scale of increasingly sophisticated vessels able to carry more and higher value cargo; and
 - larger cargo total loss payments have been avoided by general average sacrifices and expenditure

Insurers cannot turn the arguments round to suit themselves.

General average is not a panacea for protecting poor quality operators:

- cargo interests have a defence to any claim for general average contribution where the incident has been caused by breach of the carriage contract, particularly a vessel's unseaworthiness;
- questions of seaworthiness are currently under the microscope through discussions at UNCITRAL which is debating the possibility of a new convention on transport law. Proposals being discussed, which will impose ever higher standards on shipowners, include the possibility of introducing a continuing obligation of due diligence throughout the voyage and repeal of the nautical error defence; and
- the ISM Code, with its requirements for shipowners to be fully aware of all operational and safety issues connected with their vessels and take early remedial action when problems come to light, represents a further means of encouraging ever higher standards.

5. What would happen if the proposals for radical change were accepted?

In the first instance, there would be fewer general average settlements. This, however, masks the fact that there would still be costs to be met. The main difference would be where the costs lie. It seems likely that some of the new costs would fall to hull and machinery underwriters in terms of a transfer of risk from one sector of the insurance industry to another.

However, it would not be as simple as that. Shipowners would have to continue to protect their interests and could be expected to develop contractual clauses seeking to achieve the same ends as traditional general average.

At the same time, there would be considerable uncertainty about the new provisions. There would be three sets of Rules 1974, 1994 and 2004 rules. This would undoubtedly be resolved slowly, and at great expense, through the legal systems of leading maritime countries. Thus, there would be no immediate benefit to cargo (or to shipowners) since both parties could be expected to have to bear the costs of litigation and be prepared to pay up to whatever they were seeking to challenge. As a result, parties insurance costs would not fall but, perversely, they could rise.

6. What are the alternatives to general average?

The principle of general average is sound. Nevertheless, the advantages can be outweighed in relation to smaller claims or adjustments involving large numbers of individual cargo interests where the collection of security represents a significant proportion of the costs. A satisfactory market-based solution has therefore been developed through general average absorption clauses where hull and machinery insurers will meet the costs of a general average claim in full up to an agreed figure. Such clauses were often favoured by container operators but are now used, in our estimate, by 65% of operators.

7. What would happen if more limited change was introduced?

- A reduction in the cohesiveness of the binding elements that have held the institution of General Average together well, over a very significant period. As a result, as a casualty management solution, it becomes less effective.
- Confusion would exist as a set of 2004 rules would need to be introduced into contracts of affreightment to replace not just one but two other sets of rules.

8. Conclusion

The number of general averages where cargo is asked to contribute has radically fallen since 1994 due both to the widespread use of general average absorption clauses, better management practices in shipping and containerisation.

General Average

The industry is opposed to any change to the present arrangements. YAR 1994 have been applicable for less than 10 years and, in practice, for a rather shorter period since they have been introduced only gradually into contracts of carriage. There is, therefore, insufficient experience to determine whether change is warranted or, in view of the increasing obligations being placed on shipowners, needed.

There are very limited changes that shipowners might countenance, such as on the rate of interest but these are not sufficiently important to warrant introducing another set of Rules.

Pressure for change is coming from a limited quarter. There is no indication whether that view is shared by non-cargo underwriters who could be expected to meet some or all of the costs which would be shifted from cargo underwriters.

There has been no opportunity for constituent Maritime Law Association members, and the many other maritime organisations interested in the work of CMI, to properly debate the findings set out in a CMI Working Group report published at the end of last year. Until that debate has taken place, the outcome properly assessed and the views of hull and machinery underwriters put forward, there can be no basis for proposing change.

In order to put across shipowners views effectively at the conference in Vancouver in June 2004, shipowners must write now to their national Maritime Law Association to ensure that they understand and represent shipowner views.

May 2004

POSITION PAPER BY THE ITALIAN MARITIME LAW ASSOCIATION

1. Common safety v. common benefit

IUMI's proposal to reduce the scope of application of General Average (hereinafter "GA") giving relevance to the principle of "*common safety*" rather than to the principle of "*common benefit*" or, to use IUMI words, by means of the allowance in GA of expenditures or sacrifices incurred or suffered only when the properties involved in the adventure are "*in the grip of a peril*", under many aspects echoes a now long recurring criticism about GA.

IUMI's position, subsequently followed by others authors and among them by Prof. Tetley, had already been the subject for a long debate during CMI's Sidney conference in October 1994, and which brought to a compromise solution represented by the insertion of the Rule Paramount.

It should be remembered that, from a systematic point of view, the problem is still existing since there is an inconsistency of principle between Lettered Rule A, which provides that there is a GA when and only when an extraordinary sacrifice or expenditure is intentionally and reasonably incurred for the "*common safety for the purpose of preserving from peril the property involved in the common maritime adventure*" and those Numbered Rules (in particular Rules X, XI, XII and XIV) which instead only require, for the allowance of an expenditure in GA, the "*common benefit*".

On the other hand, the (itself disputed) Rule of Interpretation where at its second paragraph provides, in accordance with a general principle of law, that Numbered Rules (particular conditions) shall override Lettered Rules (general conditions) has allowed the existence of a general principle which is substantially contradicted by particular provisions.

The reasons for disputing the principle of "*common benefit*" which are reported in the Report of the Working Group (chapter 4.2) reflect those which had already been debated during the Conference of Sidney.

Also the reasons adopted to support the contrary theory (see Report, chapter 4.3) are the already known ones. A review of the opposing theories suggests the following short comments:

- a) it is obvious that the exclusion altogether of the "*common benefit*" as the inspiring and basic principle of GA or, at least, the exclusion of given sacrifices or expenditures made in relation to the common maritime adventure would go beyond the reasons relied upon to support the amendment;
- b) the opportunity to maintain the principle of "*common benefit*", although with the some mitigation, is also acknowledged by those who criticise it.

In particular it should be remembered the observation contained in Prof. K.S. Selmer's report, issued in 1958, that the principle of "*common benefit*" has the advantage to allow to come to practical solutions regarding issues such as the continuation of voyage which, in the absence of such principle and of the particular provisions inspired to it, would hardly find a solution in consideration of disputes between the parties (the point is taken also at chapter 4.3. of the Working Group Report);

- c) the introduction of the "principle of reasonableness" makes to a large extent unjustified the request to eliminate the "common benefit" since the principal reason which supports this theory is to avoid abuses which should be excluded by a strict application of the Rule Paramount;
- d) it should in any case always be recalled that a restriction of GA achieved through the elimination of the principle of "*common benefit*" substantially re-distributes among property underwriters the burdens in which GA consists.

The consequent financial advantage is therefore extremely restricted since what is not distributed among cargo underwriters and hull underwriters shall be respectively borne by each of them and the overall exposure brought by the GA act (excluding the expenses and fees of adjustment) is not reduced.

In the light of the above, the solution which should be adopted in relation to this disputed issue is to maintain Rule F and to amend the Numbered Rules in order to reduce the scope of application of the principle of "*common benefit*", without excluding it.

2. Wages and Maintenance of the crew

The observations contained in the Working Group report should be approved since if, on one side, it is true that those expenditures do not correspond to the ordinary cost of Crew but only to costs caused by the prolongation of the detention of the Vessel at a port of refuge; on the other side, it is also true that the preference treatment reserved to the Shipowner, under this aspect, does not find consideration in an equivalent treatment reserved to the other parties of the adventure who could equally suffer economic losses in consequence of the said prolongation (lets take as an example the financial damage consequent to the impossibility to dispose of valuable goods) which are not allowed in GA.

This Rule could therefore be amended, although in IMLA's view this is not a major issue in the context of YAR potential revision.

It is worth mentioning – though – that this change will bring overall a very marginal effect on the economics of the G/A.

Having said that IMLA approves the proposed amendments to Rule XI and deletion of reference to Wages in Rule XVII (Section 2)¹

¹ Reference to maintenance in Rule XVII does not seem correct for maintenance does not concur in the calculation of contributory values.

3. Fuel and Stores

IMLA does not share the proposal to exclude from G/A allowance for fuel and stores – which - unlike Wages and Maintenance of the crew, represent a burden which is not solely originated by the mere prolongation of the voyage.

The same reason applies to port charges which are originated by the act of G/A and do not represent mere running expenses.

4. Rule XIV – Temporary repairs

The more complex and debated issue is probably the allowance in AG of expenditures and costs for Temporary Repairs allowed by Rule XIV.

The dispute does not refer to the first paragraph, which allows these expenses having regard to the “*common safety*”, but second paragraph which allows in GA the “*temporary repairs of accidentals damage*” effected in order that the adventure can be completed; an allowance which, though, is subject to the general principle contained in Rule F i.e. as substituted expense.

It should also be remembered that the limit of allowance as substituted expense, is indicated in the comparison between cost of temporary repairs and the expenditure which would have been incurred and allowed in GA had those repairs not been carried out, namely, in the most recurrent case, the costs of discharging, storing, reloading cargo, in order to lighten the Vessel and carry out permanent repairs.

But the Rule also adds that for the purpose of considering the allowance of costs of temporary repairs no regard must be had to the economic saving which by virtue of the principle of substitute expense, the cost of temporary repairs has allowed to other interests (including the Shipowner’s).

A lengthy debate took place at Sidney 1994 about this Rule since in the opinion of those who rejected the principle of “*common benefit*” this Rule represented the hallmark of the abuse of the principle, since temporary repairs enable the Shipowner to charge on the other parties of the adventure a cost which at the end of the voyage, without cargo, allows the Shipowner to choose the place for permanent repairs on the basis of individual economic considerations, usually with large savings compared to costs which the Shipowner himself (and subsequently his Underwriters) could have met had, in the absence of Rule XIV, he been obliged to incur by carrying out permanent repairs in the Port of refuge.

During the Conference of Sidney the Maritime Law Associations of United States and Canada suggested the elimination of the rule, but the proposal was rejected since it was considered that the limit of allowance (in accordance with the criteria of Substitute Expenses) would have represented a sufficient protection from abuses of the rule.

In reality the reasons mentioned by the Working Group amount to substantially serious grounds to suggest a reconsideration of this rule.

What appears more relevant is the consideration made not by IUMI but by other Authors, according to which the economic advantage obtained by parties having interests on the Vessel (through the Temporary repairs Rule) in

the overall balance of the GA in terms of savings of costs of permanent repairs is not considered within Rule XIV, since as it has been seen, the said rule contains a comparison between cost of Temporary Repairs and cost of Substituted expenses i.e. loading, discharging, storing and reloading cargo, but it does not call for a comparison with other possible savings. This is evidenced by the words “*without regard to the saving if any to other interests*”.

In order to answer the criticisms and at the same time to keep Rule XIV and the advantages which it carries consideration could be given to the to elimination of the above words in order to be able to allow in GA the Substituted Expenses represented by costs of temporary repairs, only on *proviso* that such expenditure is in place not only of costs directly saved, but also of those other advantages which may be obtained by any other party of the adventure.

Such an amendment – however - would imply, on one hand, major practical problems, since the Adjuster would have to consider the saving obtained by the Shipowner as regards to costs of permanent repairs; on the other hand, it could cause complex calculations as it would be impossible – in practice - to establish the limit within which economic advantages (also the indirect ones) obtained by any party of the adventure are to be accounted for: consider for example a case where temporary repairs enable a faster continuation of the voyage and it is therefore asserted that prompt arrival of raw materials avoided the shut down of a production plant.

The first alternative amendment proposed by the WG goes in the same direction although it will eventually pose less problems than the deletion of the sentence “*without regard to the saving if any to other interests*”.

One problem which the amendment will carry is that the Adjustment will have to wait until the permanent repairs are carried out.

This problem will not arise if the second alternative will be adopted which, however, in IMLA view, carries even more potential difficulties.

Consideration should therefore be given, in IMLA view, to the proposal of either repealing paragraph two of the Rule, or reverse the principle set out therein by saying “*There shall be no admission as G/A of temporary repairs of accidental damage effected in order to enable the adventure to be completed*”.

Should these solutions appear too extreme IMLA would support the adoption of the amendment suggested by AIDE in the wording contained in its paper.

5. Time Bar

The issue had already been discussed in Sidney during the review of Rule E for which two amendments were proposed.

The first one was accepted and consisted in the insertion of paragraph 2.

The second one, concerning time bar, was dropped.

Its proposal carries the same issues and problems already examined and in particular the fact that under many law system the time bar is a matter of

public order and cannot be governed by private agreements altering the statutory provisions.

This is certainly the case in Italy and the problem could be solved only considering the time-limit not as a “prescriptive” time limit but as a conventional time bar to which the party agree by incorporation in the B/L of the YAR.

The above solution also generates the problem of the duration of the time-limit, considering that, even if the time bar can be extended by agreement of the parties, this is exceedingly difficult in practice when there are several consignments.

In view of the above comments and looking at the proposed wording of the Rule IMLA suggests the following amendments.

1. Replace paragraph (a) with the following opening sentence: “*Subject to any mandatory rule of prescription contained in any applicable national law*”
(a) Any rights (add “*also*” after “*shall*”);
2. Renumber paragraph “c” as “b”;
3. delete “*Subject to the provisions of this rule*”;
4. Consideration should also be given to deletion of the last sentence (“*This rule shall not insurers*”) which does not appear as strictly necessary.

6. Interest

IMLA agrees the proposal to amend the present rule concerning interest but has some reserve about the method proposed.

IMLA suggests that reference should be made (as in some other instruments like the Norwegian Insurance Plan) to a fixed interest computing system such as LIBOR (at a given borrowing time) plus margin.

7. Commission

The proposed addition to Rule E reflects the practice applied.

Although there is no specific rule the suggestion to add it to Rule E (one of the Rules which cover general principle) is questionable.

To some extent the same remark applies for the proposed addition to Rule C.

Consideration should be given to draft a new Rule XX to cover the issues discussed in place of the present Rule XX which disappears.

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**YOU ARE WELCOME, BUT
PLACES OF REFUGE AND ENVIRONMENTAL LIABILITY
AND COMPENSATION, WITH PARTICULAR
REFERENCE TO THE EU**

HENRIK RINGBOM*

1 Introduction

In a series of recent incidents, ships in distress carrying dangerous or polluting substances have been refused access to ports or other sheltered waters because of the perceived environmental risks involved in their accommodation. This has provoked widespread attention within the international maritime community and has exposed a number of legal uncertainties in relation to 'places of refuge'.¹ Both internationally and within the EU, the clarification of the rights and obligations of the parties involved in a place of refuge situation has remained high on the agenda for the past few years and the efforts have now produced the first results.

Article 20 of EU Directive 2002/59 requires all Member States to develop plans for places of refuge.² This work is underway and presently

* Research Fellow, Scandinavian Institute of Maritime Law, Oslo. The article, which only expresses the personal views of the author, is based on a presentation at a workshop for national experts on places of refuge, organised by the European Maritime Safety Agency on 4-5 March 2004. The author is grateful to the CMI, and in particular to the Chairman of its International Subcommittee on Places of Refuge, Mr Stuart Hetherington, for obtaining access to some draft documents related to the topic, which are due to be discussed at the 38th CMI Conference in Vancouver in May-June 2004.

¹ The problem is not new, however. See e.g. G. C. Kasoulides: "Vessels in Distress – 'Safe Havens' for Crippled Tankers", *Marine Policy*, July 1987, at pp. 184-195, providing an overview of a variety of incidents where (potentially) polluting ships have been refused access to places of refuge since the late 1970s. He also describes a number of (essentially unsuccessful) efforts to regulate the entry rights of ships in distress, including places of refuge, at international and regional levels in the 1970s and 1980s. See also L. Lucchini & M. Vølckel: *Droit de la Mer*, Tome 2, Volume 2, Pedone, 1996, at pp. 295-299.

² Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC, (Official Journal of the European Communities ('OJ'), 2002, L 208, p. 10). The full article reads: "Member States, having consulted the parties concerned, shall draw up, taking into account relevant guidelines by IMO, plans to accommodate, in the waters under their jurisdiction, ships in distress. Such plans shall contain the necessary arrangements and procedures taking into account operational and environmental constraints, to ensure that ships in distress may immediately go to a place of refuge subject to authorisation by the competent authority. Where the Member State considers it necessary and feasible, the plans must contain arrangements for the provision of adequate means and facilities for assistance, salvage and pollution response. Plans for accommodating ships in distress shall be made available upon demand. Member States shall inform the Commission by 5 February 2004 of the measures taken in application of the first paragraph."

discussions centre on how this general framework is to be translated into more detailed requirements. In the meantime, the IMO has finalised its guidelines on places of refuge for ships in need of assistance.³ The matter has also recently been on the agenda of various regional environment protection organizations.⁴ All these efforts are designed to increase the authorities' involvement in place of refuge situations in their territories and to clarify the role and responsibilities of all parties involved with a view to ensuring that ships in distress are handled in a manner which is most beneficial for maritime safety and the marine environment.

The legal background for the on-going discussions lies in the extent to which ships in distress, under public international law, have a right to enter the ports or internal waters of another State. Traditionally, such a right was considered to form part of customary international law,⁵ but the changing nature of ships, cargoes and the risks involved in accommodating them over the past decades may have altered, or at least circumscribed the rule of a presumed right of access.⁶ The view which seems to be emerging from recent

³ IMO Resolution A.949(23), Annex, adopted in December 2003 (hereinafter 'the IMO Guidelines').

⁴ See e.g. the amendments made, in September 2001, to Annex IV of the 1992 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area. A new Regulation 13 provides that the States Parties "shall, following-up the work of EC and IMO, draw up plans to accommodate, in the waters under their jurisdiction, ships in distress in order to ensure that ships in distress may immediately go to a place of refuge subject to authorisation by the competent authority; and ... shall exchange details on plans for accommodating ships in distress". See also Part XII of the Declaration on the Safety of Navigation and Emergency Capacity in the Baltic Sea Area (Helcom Copenhagen Declaration), adopted on 10 September 2001.

Article 16 of the 2002 Protocol concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea obliges the parties to "define national, subregional or regional strategies concerning reception in places of refuge, including ports, of ships in distress presenting a threat to the marine environment.

They shall cooperate to this end and inform the Regional Centre of the measures they have adopted." In the North Sea framework, a detailed (interim) chapter on places of refuge was included in the Bonn Agreement Counter Pollution Manual (Chapter 26) in May 2002. See <http://www.bonnagreement.org>.

⁵ See e.g. G. Schwarzenberger: *International Law*, Steven & Sons, 1957, p. 198; D. P. O'Connell: *The International Law of the Sea*, Volume II, (ed.: I. A. Shearer), Clarendon Press, 1984, pp. 853-858; E. D. Brown: *The International Law of the Sea, Volume I Introductory Manual*, Dartmouth, 1994, p. 39. See also E. van Hooydonk: 'Some Remarks on Financial Securities Imposed by Public Authorities on Casualty Ships as a Condition for Entry into Ports', in M. Huybrechts (ed.): *Marine Insurance at the Turn of the Millennium*, Volume II, Intersentia, 2000, pp. 129-130, referring to resolutions on the topic by the Institut de Droit International from 1898, 1928 and 1957.

⁶ See e.g. R. Churchill & A. Lowe: *The Law of the Sea*, Manchester University Press, 1999, p. 63; E. J. Molenaar: *Coastal State Jurisdiction over Vessel-Source Pollution*, Kluwer, 1998, p. 101; Kasoulides, note 1 above; Lucchini & M. Vækelkel, note 1 above; D. J. Devine: *Ships in Distress – a Judicial Contribution from the South Atlantic*, *Marine Policy*, No. 3/1996, pp. 229-234. See also M. S. Mc Dougal & W. T. Burke: *The Public Order of the Oceans, A Contemporary International Law of the Sea*, Yale University Press, 1962, p. 110 and E. van Hooydonk: 'Ports of Refuge for Ships in Distress – Not in my Front Pond? A plea for granting a

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years' discussions on the legal aspects of places of refuge is that if the entry of the ship involves significant environmental risks for the coastal State, there is no legal *obligation* for a State to accept it to a place of refuge,⁷ nor are there specific rules preventing a State from making acceptance conditional on additional requirements.⁸ On the other hand, it is difficult to find support for the existence of a general *right* for coastal States to refuse access to a ship in distress, without regard to the particular circumstances involved. By now, the widely accepted view appears to be that any question relating to the acceptance of a ship into a place of refuge has to be decided on a case-by-case basis in light of the particular circumstances at hand.⁹ The principal challenge for regulators in this area is to find agreement on where the legal presumption lies, a matter which is yet to be resolved.

The discussions aimed at clarifying the rights and obligations in place of

salvage reward to ports and an international convention on ports of refuge', paper delivered at International Workshop on Places of Refuge in Antwerp on 11 December 2003 (available at http://www.espo.be/news/proceedings_11-12-2003.asp). More recent national case law on the topic includes the *Long Lin*, Judicial Division of the Council of State (the Netherlands), 10 April 1995, R01.92.1060 and the *Toledo*, High Court (Admiralty) (Ireland), 7 February 1995, (1995) 3IR 406, both of which support a degree of latitude for the coastal State to deny entry into its waters in the case of environmental risks. In the European Court of Justice, the calling into a port by reasons of distress has been considered only once. In Case C-286/90, *Poulsen and Diva Navigation*, [1992] ECR I-6019, the Court eventually considered that it was not the right forum to decide on this aspect of the case (concerning a breach of EU fisheries conservation measures). In paras. 38-39 of the judgment, the Court concluded that "the question concerning the legal consequences of the situation of distress does not concern the determination of the sphere of application of Community legislation, but rather the implementation of that legislation by the authorities of the Member States. ... In those circumstances, it is for the national court to determine, in accordance with international law, the legal consequences which flow ... from a situation of distress involving a vessel from a non-member country."

⁷ To this effect, see the IMO Guidelines, para. 3.12: "When permission to access a place of refuge is requested, there is no obligation for the coastal State to grant it, but the coastal State should weigh all the factors and risks in a balanced manner and give shelter whenever reasonably possible" and footnote 3: "[i]t is noted that there is at present no international requirement for a State to provide a place of refuge for vessels in need of assistance". Note also the "subject to authorisation by the competent authority" proviso in Directive 2002/59 (note 2 above) and Article 9 of the 1989 Salvage Convention, providing that "[n]othing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty ...".

⁸ The right of port States, in general, to place additional conditions for entry can be deduced from Articles 25(2) and 211(3) of the 1982 UN Convention on the Law of the Sea (UNCLOS). The extent to which the distress situation circumscribes that right is subject to uncertainty. At any rate, it appears clear that general requirements of international law, such as that of good faith and the prohibition of abuse of right apply, as will considerations of reasonableness. On these considerations, in a different context, see Molenaar, note 6 above, pp. 115-117. See also section 4.3 below.

⁹ As indicated by para. 1.7 of the IMO Guidelines: "granting access to a place of refuge could involve a political decision which can only be taken on a case-by-case basis with due consideration given to the balance between the advantage for the affected ship and the environment resulting from bringing the ship into a place of refuge and the risk to the environment resulting from that ship being near the coast." See also references in note 6 above.

refuge situations have also exposed a number of more specific areas of maritime law, for which the existing legal framework might not be free from gaps or uncertainties either. The scope of this article is limited to one such field, that of liability and compensation of damage. None of the instruments on places of refuge referred to above deal with these matters. The IMO Guidelines explicitly exclude liability and compensation of damage from their scope,¹⁰ but the IMO Assembly requested the Legal Committee to consider the guidelines 'from its own perspective', specifically including the provision of financial security to cover coastal State expenses and/or compensation issues.¹¹ Within this framework, the international maritime law association, the CMI, is currently engaged in a study on the matter, which is not yet available and, in any event, is unlikely to be considered by the IMO before the Legal Committee meets in October 2004.¹² At the European level, several EU institutions have requested the Commission to analyse this matter in detail and to make appropriate proposals.¹³

After the introductory overview in chapter 2 of the existing legal framework relating to liability and compensation, chapter 3 goes on to identify various ways in which the coastal State's decisions relating to places of refuge may be relevant in the application of the existing international rules on liability and compensation. The extent to which additional requirements could be employed by the coastal State is the subject of chapter 4, considering specifically what such measures could consist of and how they might fit into the legal regime which is currently in place. The focus of the article lies on the situation which applies in the now 25 Member States of the European Union.

2 Marine pollution liability regimes applicable in the EU

For obvious reasons, there has been a considerable increase in the interest of the EU in marine pollution liability in the past few years. As regards oil pollution from tankers, the present view is that the international system is workable and should remain in place, but that it should be improved.¹⁴ The recent agreement to establish a Supplementary Fund further strengthens the prospect of being fully compensated for any damage caused by oil pollution.¹⁵ As to other forms of pollution, the situation is more unclear. There is a

¹⁰ IMO Guidelines, para. 1.17.

¹¹ IMO Resolution A.949(23), operative paragraph 4.

¹² On this project, and previous work by the CMI on issues which concern places of refuge, see www.comitemaritime.org.

¹³ See recital No. 16 and Article 26(3) of Directive 2002/59 (note 2 above) and European Parliament Resolution of 23 September 2003 on improving safety in response to the Prestige accident (P5_TA(2003)0400), para. 10.

¹⁴ For the European Commission's view, see COM (2000) 802 final of 6 December 2000.

¹⁵ For the agreement of a rapid EU-wide ratification of this Protocol, see Council Decision 2004/246/EC of 2 March 2004 authorising the Member States to sign, ratify or accede to, in the interest of the European Community, the Protocol of 2003 to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, and authorising Austria and Luxembourg, in the interest of the European Community, to accede to the underlying instruments, 2004 OJ L 78, p. 22.

specific authorisation for the EU Member States to ratify the HNS and Bunkers Conventions by June 2006, which indicates the wish of EU Governments to apply these two conventions throughout the Union as soon as possible.¹⁶ These decisions do not lay down a strict deadline for the purpose, however, and it is unclear when the dormant liability and compensation regimes will become effective in the EU and beyond. Until such a time, a serious discrepancy will remain with respect to the way damage caused by hazardous material carried on ships which are not oil tankers will be assessed and compensated in the EU.

In a parallel development, a proposal for a 'horizontal' Directive on environmental liability has recently been finalised, which may have significant implications for the regime as laid down in the IMO liability conventions.¹⁷ The new Directive's relationship to the international maritime liability regimes is not altogether straightforward. From the general scope of the Directive it is clear that it cannot and will not substitute the international maritime liability conventions, as it only focuses on the prevention and remediation of environmental damage (as opposed to 'traditional' damage such as damage to property and economic losses, which are covered by the IMO Conventions). On the other hand, the Directive does not, like the maritime conventions, provide for any limitation of the liability for the liable person. The relationship to the maritime conventions is addressed in Article 4(2) of the Directive which exempts the international maritime liability conventions from the scope of application of the Directive to the extent they are in force and applicable to the incident. Interestingly, Article 4(3) also provides that the Directive "shall be without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976, including any future amendment to the Convention", which means that even if the HNS or Bunkers Conventions are not in force, shipowners and others will generally have the right to limit their liability at a specific (and relatively low) level, in accordance with their 'global' limitation right under the LLMC Convention.¹⁸

To complicate matters further, the extent to which the LLMC Convention

¹⁶ Council Decision 2002/762/EC of 19 September 2002 authorising the Member States, in the interest of the Community, to sign, ratify or accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention), 2002 OJ L 256, p. 7 and Council Decision 2002/971/EC of 18 November 2002 authorising the Member States, in the interest of the Community, to ratify or accede to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the HNS Convention), 2002 OJ L 337, p. 55.

¹⁷ Directive 2004/35/EC of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, 2004 OJ L 143, p. 56.

¹⁸ The applicability of the exception to the LLMC was a very controversial issue throughout the drafting process of the Directive and was resolved only at the very end of the adoption process. For a full account of the drafting history, reference is made to the Legislative Observatory of the European Parliament at:

http://www.db.europa.eu.int/oeil/oeil_ViewDNL.ProcedureView?lang=2&procid=5985

covers claims relating to damage arising from a place of refuge situation is not entirely clear. First, it is not evident that claims relating to ‘pure environmental damage’ will fit into any of the categories of claims listed in Article 2(1) of the 1976 Convention.¹⁹ It may thus be that a claim relating to damage to the environment as such, which at least to some extent *is* covered under the EC Directive,²⁰ will not be subjected to the right of limitation. Second, Article 18(1) of the LLMC Convention specifically permits States to exclude the application of sub-paragraphs d) and e) of Article 2(1).²¹ In other words, at least wreck removal claims may be exempted from the global limitation, if the State decides to make such a reservation.²² In addition, the extent to which such reservations apply is not clear. In particular, it is conceivable that a number of claims arising from a place of refuge situation could relate to “the removal, destruction or the rendering harmless of the cargo of the ship”, and could thus be exempted from global limitation. Such a reservation has been made by some, but not all EU Member States.²³ In any case, therefore, as long as the HNS and Bunkers Conventions are not in force there may be a

¹⁹ Article 2(1) provides as follows: “Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

a. claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connexion with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

b. claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;

c. claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connexion with the operation of the ship or salvage operations;

d. claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;

e. claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

f. claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.”

²⁰ See the definitions of ‘environmental damage’ and ‘damage’ in paragraphs (1) and (2) of Article 2.

²¹ LLMC Article 18(1). This is an exception to the main rule that no reservations are permitted under the LLMC Convention. The 1996 Protocol to the LLMC Convention, which entered into force on 13 May 2004, permits the additional exclusion of claims within the meaning of the HNS Convention.

²² The responsibility of owners to remove wrecks is not yet regulated internationally. States have a possibility under international law to place national requirements for the removal of wrecks located in their territorial waters and many States have done so. IMO is currently preparing a convention which regulates the removal of wrecks in the exclusive economic zone, but the draft Convention’s provisions on liability and insurance obligations are not yet finalized (see Articles 11-13 of the draft text in IMO Doc. LEG 87/4 and IMO Doc. LEG 87/17, Annex 2).

²³ On the basis of the information available at the CMI website (www.comitemaritime.org/ratific/imo/imo11.html) at least Belgium, Germany, the Netherlands and the UK, have reserved the right to exclude (one or both of) the relevant subparagraphs.

significant difference between EU Member States in respect of the extent and nature available from pollution caused by ships, not being oil tankers. The overall liability ranges from anything as low as € 200.000 under the 1976 version of the LLMC²⁴ to potentially unlimited financial obligations in case the Directive is deemed to apply. The Bunkers Convention will only partially do away with this inconsistency, as its compensation levels are linked to those applying under the LLMC regime.²⁵

In conclusion, a number of potentially hazardous ships and cargoes, which may very well be in the need of a place of refuge, are not subject to any strict liability regime or compulsory insurance regime, nor is there any second layer of protection in the form of a compensation fund available. In such circumstances, the liability of any of the players involved in the place of refuge situation will normally be decided on the basis of national laws, the negligence of the players involved generally being the key criterion for establishing liability.²⁶ The fact that shipowners nevertheless in many cases will benefit from the right of limitation under the LLMC Convention represents an additional concern for the authorities. The extent of the concern depends on what version of the LLMC applies and the extent to which specific reservations have been made. As the prospect of full financial recovery for all claimants may be considerably reduced through the applicability of the LLMC limitation, pressure for supplementary claims against other parties may increase accordingly. The place of refuge situation may provide the opportunity for claimants to direct such supplementary claims against the public authorities.²⁷

Such a variety of liability and compensation levels is clearly not in the interest of the EU more generally, and in the specific situation of places of refuge, one could even conceive more tangible difficulties. In certain situations it may even lead to cases of ‘place of refuge shopping’, whereby a

²⁴ The limit of the 1976 LLMC for damage other than personal injury is SDR 167.000, but will be raised according to the tonnage of the ship, so that a ship of 70.000 tonnes will have a global limitation amount of 8,5 million SDR.

²⁵ See Article 6 of the Bunkers Convention, which provides that nothing in the Convention “shall affect the right of shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as the [LLMC Convention]”. As has been observed, however, the wording falls short of amounting to a *right* for owners and others to limit their liability to the limits provided for in the LLMC Convention. See C. de la Rue, as referred to in *Lloyd’s List* 17 December 2003: “Probing the limits of the maritime regime”.

²⁶ The new environmental liability Directive in the EU could possibly change this situation by establishing a strict liability on the ‘operator’ to bear the costs for the preventive and remedial action under the Directive. That liability would not, as of yet at least, be coupled by compulsory insurance. See note 17 above, in particular Articles 8 and 14.

²⁷ See also Article 8(3) of the environmental liability Directive (note 17 above), relieving the operator from his obligations when damage “resulted from compliance with a compulsory order or instruction from a public authority other than an order or instruction consequent upon an emission or incident caused by the operator’s own activities” and requires Member States, in that case, to “take the appropriate measures to enable the operator to recover the costs incurred”.

ship in distress, if it has a choice, chooses to request refuge in a State where more lenient liability rules apply.

3 EXPOSURE OF COASTAL STATES IN THE EXISTING REGIMES

3.1 General

For the purpose of analysing the relationship between places of refuge and the rules on liability and compensation, a starting point is the extent to which coastal States may have a liability or other forms of financial exposure under current legal regimes. Since public international law does not offer much guidance on State liability for this type of situations,²⁸ the role and extent of coastal States' liabilities has to be assessed on the basis of the civil liability regimes in place, notably the marine pollution liability conventions developed by the IMO.

In brief, the maritime pollution liability regimes are based on a strict liability which is channelled exclusively to the registered owner of the tanker, and coupled with compulsory insurance requirements and a very solid right to limit the liability up to a specified amount. If damage exceeds this limit, the Fund will step in and compensate up to the level of its maximum limit. The Fund has very few defences and will compensate even in cases where the owner is uninsured or otherwise incapable of meeting his financial obligations. Compensation is thus largely independent of what or who actually caused the damage. Yet, there is a possibility to exonerate the owner and the Fund from their compensation obligations with respect to claimants who have contributed to the damage through their own fault or negligence, but this possibility does not apply to 'preventive measures', at least not as far as the IOPC Fund is concerned.²⁹

The traditional view, which seems to be the position initially taken by

²⁸ UNCLOS contains a variety of obligations for coastal States to protect the marine environment, but contains few provisions on the responsibility and liability of States. Article 235(1) merely provides that States "shall be liable in accordance with international law", while Article 304 clarifies that UNCLOS provisions "are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law." See, however, UNCLOS Article 232, providing that with respect to enforcement measures taken to protect the marine environment, "States shall be liable for damage or loss attributable to them arising from measures taken ... when such measures are unlawful or exceed those reasonably required in the light of the available information. States shall provide recourse in their courts for actions in respect of such damage or loss." Generally, on States' international liability for environmental harm, see P. W. Birnie & A. E. Boyle: *International Law and the Environment*, Oxford University Press, 2002, pp. 181-200.

²⁹ The protection of a person taking preventive measures is different under the CLC Convention (Article III(3), see also HNS Convention Article 7(3)) and under the Fund Convention (Article 4(3), see also HNS Convention Article 14(4)). Under the latter, any person taking preventive measures will be compensated, irrespective of contributory negligence, while under the CLC contributory negligence may exonerate the owner from his liability towards such persons. This limitation of the 'responder immunity' in the CLC is also implicit in the

several delegations at the IMO's Legal Committee,³⁰ is that thanks to this particular design of the system, compensation will be ensured to the extent of the damage irrespective of whether the incidents involve a place of refuge situation or not. As the question of what actually *caused* the damage generally is of lesser importance compared to the availability and swiftness of compensation, few questions to this effect are normally asked and this should benefit anybody involved in an oil spill, including the State offering the stricken ship a place of refuge. In other words, goes the argument, there is no need for coastal States to hesitate in granting a ship refuge as far as compensation is concerned.

Yet, a closer look at various scenarios indicates that the issue might not be all that straightforward, which implies that not even the entry into force of the HNS Convention will necessarily do away with all concerns by coastal States. Even if a State is entitled to compensation for the losses it has had in a place of refuge situation, it does not exclude the possibility that the State is found to bear part of the responsibility for the damage, which may well be a larger concern for it. In discussing the legal consequences of accepting/refusing a ship into a place of refuge, it seems useful therefore to separate between issues related to compensation and those of liability.

3.2 *Compensation*

The most obvious risk with accepting a ship to a place of refuge is that by directing the ship towards its own coastline, the State accepts a risk of pollution occurring in its waters, which may not have concerned it at all, had the ship continued its voyage. Damage occurring in the coastal State in this manner will generally be covered by the CLC/Fund system, even if the owner's insurance fails. Claimants, whether public or private, will thus have access to compensation for any damage or loss they have suffered. The fact that some States and individuals are of the opinion that the system is not

'channelling clause', where Article III(4)(e) (like Article 7(5)(e) of the HNS Convention) prevents the placing of additional compensation claims on any person taking preventive measures, but still preserves the right of owners to take recourse action against such persons. The confusing result of this is that the owner may be relieved from his obligation to compensate a person who has taken preventive measures and acted negligently in doing so, but that person will still have the right to be compensated by the Fund under Article 4(3) of the Fund Convention. In a spill which is within the financial limit of the CLC, this person will be the only one with access to the Fund.

³⁰ See the Report of the Legal Committee's meeting in April-May 2003 (IMO Doc. LEG 86/15), paragraph 126 of which reads: "There was wide agreement in the Committee that ships in distress situations are covered by the current liability and compensation regime, i.e., those conventions which are in force ... along with those which have been adopted but have not yet entered into force ..., as well as those under development It was recognized there may be gaps since not all ships were subject to compulsory insurance requirements and not all States were party to the relevant instruments. The Committee agreed that a comprehensive examination of this matter would be conducted once the results of the CMI study were available." At the next meeting in October 2003, the Committee identified a number of specific issues related to liability and compensation which it considered to merit further study. See IMO Doc. LEG 87/17, paras. 153-161.

generous enough in affording compensation for pollution damage is a completely different matter, which shall not be further discussed here.

As for the coastal State itself, other issues may arise. For example, can the directing of a tanker to a place of refuge which in the end turns out to be wholly unsuitable for the purpose result in contributory negligence on the basis of CLC Article III(3) and Fund Convention Article 4(3)? Or what is the situation with respect to an unsuccessful salvage operation, controlled by the coastal authorities, resulting in further damage? A reasonable point of departure would seem to be that measures of this kind should be considered to fall within the category of 'preventive measures' and that authorities, as a consequence, would largely be financially protected against additional claims of compensation and would, in any case, have access to the Fund for recovering its expenses.³¹

It may not always be self-evident, however, particularly not in litigation, that a measure which has contributed to the damage should be labelled a 'preventive measure', no matter how good the intentions behind it. It is not certain, for example, that all actions by the authorities will pass the test of reasonableness, which forms part of the definition of preventive measures.³² Another condition for qualifying for preventive measures is that they are taken 'after an incident has occurred'. If there was no pollution damage before the authorities took up the action, disputes may arise with respect to the timing of the 'incident'.³³ If, for such or other reasons, the actions by the coastal authorities fail the test for 'preventive measures' and are considered to entail negligence on their part (which in that case need not be a long step away), neither the owner nor the Fund will be under an obligation to compensate the authorities.

Another example of possible links between places of refuge and liability is the exemption of owners' liability in case of failure by the Governments to maintain lights or other navigational aids, laid down in CLC Article III(2)(c). Could, for example, the indication of a wholly unsuitable place of refuge on the chart in itself could be considered to be exempt owners from liability in this respect? Whatever the likelihood of that, it is clear that bringing ships into the coastal waters increases the risk of discovering potentially unmarked navigational hazards, which, in a very unfortunate case, may cause or contribute to (further) environmental damage and may be of significance in establishing liability. Even if the owner were to be exempted from liability for such reasons, it would not exempt the Fund from its obligation to compensate

³¹ See note 29 above.

³² CLC Article I(7) defines preventive measures as meaning "any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage."

³³ The term 'incident' is relatively broadly defined in CLC Article I(8) as meaning "any occurrence, or series of occurrences, having the same origin, which causes pollution damage or creates a grave and immediate threat of causing such damage." In a case where a ship is admitted to a place of refuge before any pollution has occurred, liability may thus depend on the level of threat posed by the ship at the time refuge was granted.

the victims of the pollution incident and preventive measure by the Government. Yet, it might well affect its duties to compensate the coastal State for other damage or losses incurred.³⁴

A different, yet very relevant question is whether *refusal* to accept a ship into refuge could involve legal or financial consequences for the coastal State. In particular, could contributory negligence arise if a State refuses access and still suffers from the pollution caused, perhaps even precisely because of that? There is no reason why this could not be the case, though such negligence may be hard to prove in the absence of specific requirements for coastal States. Here too, the measures it has undertaken to prevent or minimize damage would still be compensated by the Fund. Other losses may not be so, however, and in this case there are evident risks of other claims against the public authorities, should such contributory negligence be established.

Even if the IOPC Fund generally might be expected to take a cautious view on the issue of contributory negligence on the part of a coastal State, it is by no means certain that shipowners and P&I Clubs will be equally politically sensitive. This type of (perceived) risks may affect coastal States' willingness to accommodate ships in distress. A mechanism to reduce such considerations could be to distinguish public authorities admitting a ship into a place of refuge from other claimants, by limiting the applicability of the 'contributory negligence' regime for them, and perhaps by adding them among the parties which are essentially exempted from compensation claims in the channelling clause in Article III(4) of CLC.³⁵ More softly, this type of solutions could be arrived at by means of an IOPC Fund resolution stating the interpretation to be taken by the Fund in places of refuge situations. Those measures could also clarify that the whole range of measures taken on behalf of coastal States in a place of refuge situation generally are considered to represent preventive measures.

3.3 Liability

Apart from various risks of not being able to recover fully the expenses arising from admitting a ship into a place of refuge, the coastal State may have concerns for being held liable for having contributed to the damage through its own decisions and conduct during the operation. The extent to which State authorities may be held liable depends on the domestic laws of each State

³⁴ More dramatically still, owners would presumably also be exonerated from any liability in accordance with CLC Article III(3) in a case where a polluting ship is brought into a place of refuge and it turns out that the act of pollution was a terror attack. In this case, the Fund would generally have the obligation to compensate, as long as the situation could not be brought within its defences relating "act of war, hostilities, civil law or insurrection" under Fund Convention Article 4(2).

³⁵ See also S. Hetherington: 'Places of Refuge – Civil Liability', draft paper for the 38th CMI Conference in Vancouver in May-June 2004 (on file with author), containing a draft wording for a potential new subparagraph of CLC Article III(4), excluding from compensation claims: "any State, port authority, all their servants and agents and any other person or corporate entity granting a place of refuge to a vessel."

Party and is not regulated in the conventions. The existing liability system does not, thus, exempt a coastal State from liability in a place of refuge situation, nor would the kind of arrangements proposed in the previous section protect the coastal State in this respect. Irrespective of those measures, owners and insurers would still have the right under CLC Article III(5) to take recourse action against any third parties, including public authorities.³⁶ A similar possibility would seem to exist for the Fund.³⁷ The liability of public authorities is not harmonised within the EU or elsewhere, and it may well be that in some jurisdictions, such recourse actions may succeed.

Even in the absence of such actions by the owners or the Fund, authorities having directed a polluting ship into its jurisdiction are likely to be subject to internal pressure from oil pollution victims who might not be entitled to compensation by the IOPC Fund, or may otherwise be dissatisfied with the situation. There is nothing in the conventions preventing victims of an oil spill suing their own authorities for negligence and, here again; it is possible that they will succeed. Clearly, such efforts by claimants are likely to be fuelled by a decision within the CLC/Fund framework that contributory negligence exists on behalf of the authorities.

The refusal of a ship to a place of refuge may involve other types of responsibilities for the coastal State, even if the ship concerned does not cause any pollution damage in its territory. If the refusal results in transboundary pollution, questions of inter-State liability under public international law may arise. A well-established principle of customary international law, which is also codified in UNCLOS Article 194(2), obliges States to ensure that activities under their jurisdictional control “are so conducted as not to cause damage by pollution to other States and their environment”. More importantly, perhaps, UNCLOS Article 195 provides that “[i]n taking measures to prevent, reduce or control pollution of the marine environment, States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution to another.” Finally, the measures taken by the coastal State to enforce the refusal may, on the basis of UNCLOS Article 232, result in liability for the State “when such

³⁶ The paragraph reads: “[n]othing in this Convention shall prejudice any right of recourse of the owner against third parties.”

³⁷ See Fund Convention Article 9(2), which in principle provides the Fund with broad rights of recourse and subrogation against third parties. Yet, the Fund’s entitlement to a general right of recourse against third parties is less explicit than that of the owner and may entail limitations, as the Fund’s rights in this respect could exceed those of the persons which it subrogates. In practice, the Fund’s approach to recourse action has been cautious and seems to have taken into account the limitations imposed by the ‘channelling clause’ of CLC Article III(4) (see e.g. the discussions in the *Erika* Case, documented in IOPC Fund Doc. 92FUND/EXC.18/5/Add.2), which implies that the Fund itself takes the view that its rights of recourse are more restricted than those of the owner. For a criticism, see para. 18 of IOPC Doc. 92FUND/WGR.3/14/5 submitted by France, Spain and the European Commission. For an overview of the recourse actions by the Fund, see M. Jacobsson ‘The international compensation regime 25 years on’ in *The IOPC Funds’ 25 Years of Compensating Victims of Oil Pollution Incidents*, IOPC Funds, 2003, pp. 18-20.

measures are unlawful or exceed those reasonably required in the light of the available information". In view of such international obligations, it is by no means inconceivable that a place of refuge situation could give rise to claims under public international law, quite possibly involving the compulsory dispute settlement procedures under UNCLOS Part XV.³⁸

3.4 Conclusion

The examples given above are by no means exhaustive and may not even be the most probable interlinks between place of refuge situations and liability and compensation. Yet, they show that there may be cases within the existing legal framework where accepting or refusing a ship to a place of refuge may entail risks for the coastal State, both in terms of financial risks and in (partial) liability.³⁹ The provisions protecting persons taking preventive measures go a long way towards ensuring that a coastal State taking (reasonable) preventive measures will have a remedy for recovering its expenses, irrespective of negligence. It does not, however, guarantee that measures taken in a place of refuge situation meet the criteria for preventive measures. Nor does the current regime protect the authorities against claims for contributory negligence, which in turn may result in other losses for the coastal State. Finally, a coastal State accepting a ship into a place of refuge is not protected against other claims for liability for causing or contributing to the damage, notably those arising from recourse actions by the owner or the Fund, or claims which are brought against it outside the convention system.

The probability of such negligence or liability arising cannot be assessed in the abstract, of course, as each case needs to be considered individually and depends on the nature of the coastal State's action and its relationship to the damage or loss. The risks for coastal States should not be exaggerated, however. In general, the measures and decisions taken by the coastal State offering a ship in distress a place of refuge are not at the origin of the incident, which reduces the case for placing the blame and financial burden for it with

³⁸ See in particular UNCLOS Article 297(1), providing that the compulsory settlement procedures apply to disputes concerning the interpretation or application of UNCLOS as far as, among other things, environmental protection is concerned. See also A. E. Boyle: 'UNCLOS, the Marine Environment and the Settlement of Disputes' in H. Ringbom (ed.): *Competing Norms in the Law of Marine Environmental Protection*, Kluwer, 1997, pp. 241-256.

³⁹ While the focus of this article is on civil claims and compensation, it may be noted that there are no guarantees that authorities accepting a ship to a place of refuge will remain outside the reach of criminal charges. Recent amendment proposals by the European Parliament with respect to the draft Directive on ship-source pollution and on the introduction of sanctions, including criminal sanctions, for pollution offences (COM(2003)92 final) indicate that there may be political demands for this type of penal measures to be expressly regulated in the EU. In the proposed amendment, "the competent (port) authority" is added among the parties potentially exposed to criminal liability in case of marine pollution. In the justifications for the amendment, the Parliament explains that: "[d]ecisions by the port authorities or responsible agencies may give rise to or exacerbate environmental pollution by shipping, for example, where the competent authority refuses a ship in distress access to a port or a safe anchorage." See EP Doc. A5-0388/2003 of 13 January 2004.

its authorities. The strict liability of the owner and the general design of the system are also intended to avoid this type of claims. So far, the negligence or liability of the coastal State has not been of much practical relevance in the operation of the IOPC Fund. As far as is known, not a single incident has yet been considered by the Fund, where compensation has been specifically linked to the negligence or liability of the coastal authorities in a place of refuge situation. Nor is there any known case law on places of refuge which establishes liability for a coastal State under public international law.

4 New situation - new requirements?

4.1 The emerging new regime for places of refuge and liability and compensation

There is an inter-relationship between the on-going elaboration of new 'technical' rules on the role of the players involved in a place of refuge situation, notably the IMO Guidelines, and the rules on liability and compensation. On the one hand, the new technical rules may, perhaps inadvertently, influence the liability of the parties involved by affecting the standard of care which is expected from them. So far there have been few specific standards against which the conduct and decision-making of the coastal State in a place of refuge situation could be assessed. The new IMO Guidelines explicitly enumerate a number of criteria to be assessed and measures to be taken by coastal authorities when deciding on the access of a ship in distress. It is not unreasonable to assume that the elaboration of such new rules and standards will have implications for the threshold of negligence. It may even be that failure to meet those standards in itself will be considered to represent evidence of negligent conduct. Such questions may be particularly relevant within the EU, where respect for the IMO Guidelines has been anchored in a more solid legal basis through the reference (albeit a loose one) in Article 20 of Directive 2002/59.

The new situation will work both ways. In case the coastal State *accepts* a ship into a place of refuge, the ensuing damage may be (partially) blamed on the authorities' negligence, if the applicable procedures have not been complied with. Similarly, in case *refusal* of access leads to damage, whether in the coastal State itself or in another State, the emerging new standard of care will probably be invoked for scrutinizing in detail the reasons given for the refusal. In both cases, it is probable that the new standards will not only clarify, but also lower the threshold for negligence on behalf of public authorities. In other words, while representing but a 'side-effect' of the on-going clarification of the place of refuge rules, the new standards may well increase the financial risks of coastal States in being involved with ships in distress.

On the other hand, liability rules may affect the 'technical' rules. By explicitly basing themselves on a case-by-case assessment of each individual request of refuge, the new IMO Guidelines leave open the possibility for liability and compensation considerations playing a role in the assessment and decision-making process.⁴⁰ The financial and legal exposure of the coastal

State, whether perceived or real, may play a role when the State decides on whether or not to accommodate the ship. In order to avoid that matters related to liability and compensation overtake technical and environmental considerations in the decision-making, coastal States need to be assured that the applicable rules offer the necessary protection for them. On the basis of the analysis in the previous chapter, the existing liability and compensation regime does not preclude risks for the coastal State, but the extent of those risks varies largely depending on the nature of ship and cargo involved and, of course, on the conduct of the coastal State authorities.

It may be, therefore, that States or groups of States consider that the new technical place of refuge standards bring about a new situation which needs to be reflected in the rules of liability and compensation. Given that the thrust of the new standards lies in promoting *acceptance* of ships into places of refuge,⁴¹ it seems natural that any additional rules on liability and compensation would mainly focus on added protection for the coastal State accommodating a ship into a place of refuge. On those premises, some ways in which coastal States could possibly improve their protection against exposure will be discussed below.

4.2 *International regulation*

4.2.1 A new place of refuge convention or protocol

Starting from the most far-reaching solution, it has been suggested that a new international convention or protocol is needed to specifically address various questions related to places of refuge.⁴² While it is unlikely that

⁴⁰ To some extent such considerations are inherent in the IMO Guidelines. See e.g. para. 3.9, listing among the factors to be analysed “whether the ship is insured or not insured” and “identification of the insurer, and the limits of liability available”. See also para. 3.14 (quoted in note 48 below) and Appendix 2, para. 2.2, (note 55 below) referring to the security in favour of the port, in case the place of refuge is a port.

⁴¹ See para. 1.3 of the IMO Guidelines: “[w]hen a ship has suffered an incident, the best way of preventing damage or pollution from its progressive deterioration would be to lighten its cargo and bunkers; and to repair the damage. Such an operation is best carried out in a place of refuge.” See also the background section (paras. 1.8-1.10) listing a number of additional advantages in accepting a ship into a place of refuge, as to opposed to refusing it. Para. 3.12, which is the only paragraph of the Guidelines indicating a presumption, provides that the State, after having balanced all factors, should “give shelter whenever reasonably possible”. The EU Directive (note 2 above) similarly presumes that the aim of the place of refuge plans is “to ensure that ships in distress may immediately go to a place of refuge subject to authorisation by the competent authority”.

⁴² See e.g. N. Gaskell: ‘1989 Salvage Convention and Lloyds Open Form Salvage Agreement’, 1991 *Tulane Maritime Law Journal*, p. 21; Kasoulides, note 1 above; E. van Hooydonk, note 6 above. For specific proposals on the content of such an instrument, see the document submitted by the International Union of Marine Insurance to the IMO Maritime Safety Committee, IMO Doc. MSC 77/8/2. See also para. 38 of the European Parliament Resolution referred to in note 13 above, calling upon the Commission and the Member States “to make their best efforts to reach an agreement within the IMO on an international public law convention on places of refuge”.

liability and compensation questions alone would warrant such an instrument, it seems both logical and justified to include such provisions in a new convention or protocol, should the project materialise. Based on the shortcomings identified above, the following aspects would seem particularly important to cover. The strict liability of the owner should cover all potential risks involved in admitting a ship to a place of refuge, including pollution and other damage caused by any hazardous substances on board. The liability should further cover potential expenses for the removal of the wreck and cargo. The strict liability should be coupled with compulsory insurance and rights of direct action, to be ensured by means of certificates which could be regularly verified by port State (control) authorities. In light of the purpose of the measure, that is, to minimise the extent of damage arising from a distress situation, there seems to be no immediate reason to offer owners a right to limit their liability in these cases. Potentially unlimited liability would also render redundant the establishment of a second tier compensation fund.

On the other hand, the instrument should also lay down in detail the liability of States refusing access to a place of refuge in violation of the standards agreed for this purpose, when such refusal results in further damage. This would help to ensure that any decision to refuse the access of a ship in distress is properly justified on the basis of the agreed criteria and would also serve to shift the assumption more solidly in favour of acceptance. A clearly defined liability for States which unduly refuse access could maybe also prove helpful for the coastal States' authorities when seeking to justify at a national level the – possibly very unpopular – decision to accommodate a polluting ship.

Such an instrument is not easily implemented at the EU-level, as several of the requirements outlined above would be incompatible with the existing international liability regimes. A new instrument should therefore preferably be developed at a global level, where it could be specifically confirmed that the liability regime arising from a place of refuge situation constitutes *lex specialis* in relation to the liability and compensation rules which apply to other incidents. The instrument would primarily apply as between parties to it, but there is nothing to exclude a CLC-like arrangement, by which the required financial security can be equally made available to ships flying the flag of non-parties.⁴³

In the real world, however, there may be significant reluctance on both sides to developing such an instrument. Concerns for increased financial exposure on behalf of both owners and coastal States may significantly moderate their dedication to a new liability regime, as could fears for its potential interference with the existing conventions. Moreover, any balance to be established in respect of the liabilities involved would have to be closely connected to the overall balance in the instrument as regards the right of entry vis-à-vis the right of refusal, on which consensus seems exceedingly remote. Until there are prospects of widespread acceptance of a new instrument, it seems more probable that liability developments at an international level will

⁴³ See CLC Article VII(2) and HNS Convention Article 12(2).

remain limited to campaigns aiming at increased ratification of liability instruments that already exist. As has been shown, acceptance of the 1996 Protocol to the LLMC, the Supplementary Protocol to the IOPC Fund and the HNS and Bunkers Conventions would significantly improve the protection of coastal States.

4.2.2 Ports as salvors

Another proposal, which has been put forward recently by Eric van Hooydonk, is based on the idea that ports should be treated as salvors and should thus have access to salvage rewards for allowing the stricken vessel to access its facilities.⁴⁴ In this way, they would have a significant incentive to engage in accommodating ships into places of refuge. The accommodation of ships in distress would turn from a nuisance to a privilege. The prospect of having a variety of ports competing about the right to offer the ship in distress a place of refuge is no doubt a refreshing one.

However, while such a solution could certainly amount to a significant extra incentive – and source of income – for ports, it is less clear if it would meet the more general concerns of the coastal State, the local community and others who will not share such salvage rewards. Moreover, offering a place of refuge to a ship in distress seems to have rather little in common with the concept of salvage as it is presently understood. As the proposed idea challenges both the notion of a ‘salvage operation’ and the criteria for reward and compensation as laid down in the 1989 Salvage Convention, it seems evident that a significant regulatory intervention would be necessary to accommodate this idea into the existing legal framework. This is likely to present a number of challenges.

Basing the proposed rewards on traditional salvage rewards, as provided for in Article 13 of the 1989 Salvage Convention, would not seem to produce the intended incentives. Such rewards, which are to be fixed “with a view to encourage salvage operations”, are based on the successful recovery of the ship or cargo and are limited in amount to the salvaged property at the time when the salvage terminates.⁴⁵ Irrespective of whether, in the proposed idea, it would be for the salvor to share his reward with the port or if the new reward would be a separate one, it follows that the shipowner, cargo owners and others would only be liable to contribute to the reward to the extent they have actually benefited from the ‘salvage’ by the port. Apart from invoking various

⁴⁴ van Hooydonk, note 6 above. The underlying idea is that ports are in reality subcontractors of the salvage company, as without access to a port salvage cannot generally be successful. Ports should therefore legally be regarded as salvors and should be granted a salvage reward, or at least part of the normal salvage fee. Ports should thus not only have access to compensation for loss sustained, but could, on the basis of new treaty provisions, to be developed on the basis of existing principles of salvage law, also receive ‘an attractive and relatively large fee’. As Mr van Hooydonk concedes, however, this proposal is not entirely consistent with his view that ships in distress enjoy a presumed right of access to ports in customary international law and that such a right extends to the total or partial exemption of charges for the purpose.

⁴⁵ Article 13 of the 1989 Salvage Convention.

difficulties in assessing the port's reward in these terms, it also implies that the port's willingness to offer a place of refuge would depend on the value of ship and cargo and on the prospect of success of the salvage operation as a whole. None of those considerations would result in a general incentive for ports to offer places of refuge.

This could perhaps be coupled by the 'special compensation' regime foreseen in Article 14 of the 1989 Salvage Convention, departing from the 'No cure, No pay' rule when there are elements of environmental protection involved in the salvage operation. Such compensation, however, is based on the expenses incurred, implying that if there are no expenses as defined in Article 14(3) there will be no special compensation.⁴⁶ The term 'compensation', as has been pointed out, relates to reimbursement or recompense, rather than to profit or reward, which reduces the case for basing additional rewards, exceeding the salvor's expenses, on Article 14.⁴⁷ This is particularly the case for ports, whose business, as opposed to that of salvors, does not depend on such payments. As to the expenses which they *have* incurred, ports' rights of recovery are widely acknowledged elsewhere. Indeed, the IMO Guidelines specifically acknowledge ports' right to demand a security for the recovery of any such expenses as a condition for letting the ship into the port in a place of refuge situation.⁴⁸

The role of ports and other authorities in salvage entails other considerations too. Even if port authorities have actually performed such operations, they may be subject to a number of restraints in claiming salvage rewards, due to the nature of their duties towards users of ports and the public more generally.⁴⁹ If, as in this case, the port does not assist the operation in

⁴⁶ The starting point is that the salvor is entitled to special compensation for protecting the environment, if he fails to recover his expenses under the 'normal' salvage reward (Article 14(1)). In certain circumstances, compensation may be increased under Article 14(2), but the maximum amount of special compensation can, in any case, not exceed twice the amount of the salvor's expenses, to be reduced by any salvage reward recoverable through the 'normal' reward criteria of Article 13. See also the SCOPIC 2000 Clause to the Lloyd's Form, which, if applicable, substitutes Article 14 of the Salvage Convention. Para. 5(i) of the Clause defines SCOPIC remuneration as "the total of tariff rates of personnel; tugs and other craft; portable salvage equipment; out of pocket expenses; and bonus due".

⁴⁷ See F. D. Rose: *Kennedy and Rose, The Law of Salvage*, Sweet & Maxwell, 2002, at p. 206, referring to the judgment by the English House of Lords in the *Nagasaki Spirit*, [1997] 1 Lloyd's Rep. 323. See also *id* at p. 198, where it is concluded that "[i]n short, salvors can not under Article 14 expect any payment measured in terms of profit or reward."

⁴⁸ Para. 3.14 provides: "[a]s a general rule, if the place of refuge is a port, a security in favour of the port will be required to guarantee payment of all expenses which may be incurred in connection with its operations, such as: measures to safeguard the operation, port dues, pilotage, towage, mooring operations, miscellaneous expenses, etc." In any case, ports, like other claimants, are entitled to claim compensation for any losses under the existing environmental liability and compensation regimes.

⁴⁹ See e.g. F. D. Rose, note 47 above, at pp. 327-330. See also Articles 5(1) and (3) of the 1989 Salvage Convention making it possible to apply national rules on the topic, insofar as the salvage operation is undertaken or controlled by *public* authorities, and permitting public authorities under a *duty* to perform salvage operations to avail themselves of the rights and remedies provided for in the Convention.

other ways than by offering the ship a place of refuge, it is even less self-evident that it should be rewarded for it.

In light of such considerations, one may question whether the proposed idea is really about salvage at all. What seems to remain is a specific reward – or grant – offered to the port for the mere accommodation of the ship in distress. This may be desirable, of course, but in light of the various tensions created with the existing law and principles of salvage it could perhaps be arrived at by other – less troublesome – means, such as the adjustment of port dues for ships in distress posing particular risks.

4.3 *The voluntary approach*

4.3.1 ‘Voluntary’ commitments *ad hoc*

Outside the scope of international regulation, one may conceive that shipowners agree on an *ad hoc* basis, on the spot, to various additional requirements as a condition for access into a place of refuge. A typical – and not entirely hypothetical – example in the field of liability would be a requirement that the owner denounces the right to limit his liability in a place of refuge situation.⁵⁰ Such a ‘voluntary’ denunciation of the owner’s limitation right may be legally possible, of course, depending on its form.⁵¹ The most obvious risks with such *ad hoc* solutions, from an environmental point of view, are that they may delay the place of refuge operation and may divert attention from the environmental and technical criteria established for the decision-making process. Another plausible risk with this particular example is that owners and their insurers may not agree. The latter risk is particularly problematic when viewed from a wider EU perspective. Unless such rules are applied in a wider geographical area, this type of solution involves risks of ‘place of refuge shopping’ and may not be in the interest of neighbouring States or of environmental protection more generally.

It is true that the risk of ‘place of refuge shopping’ in some cases can have beneficial effects in raising the standard of protection in neighbouring States. This, however, only applies insofar as the requirements have the potential of being accepted by both coastal States and the representatives of the ship concerned. If not, the access to port requirement easily defeats the purpose of places of refuge, as it amounts to a *de facto* refusal of any ship in distress from any place where the requirement applies. That consequence

⁵⁰ Requirements which may include the denunciation of limitation rights under CLC and other conventions as a condition for access to a place of refuge have recently been adopted by Spain through Article 21(5)(g) of Royal Decree 210/2004 of 6 February 2004 (see Boletín Oficial del Estado No. 39, p. 6868 or <http://www.alavela.com/downloads/Legislacion/RD2102004.pdf>). See also *Lloyd’s List* of 11 February 2004: “Spain seeks unlimited liability in refuge move”, 18 February 2004 “Spanish ships refuge decree has cash sting” and 2 March 2004: “Salvors’ concern over cash guarantees for refuge rules”.

⁵¹ As in most maritime law jurisdictions, waiving the owner’s right to limit liability goes beyond the authority of the Master, other mechanisms of consent would be required for such agreement to be legally effective.

does not appear to fit within the current legal framework for places of refuge. Furthermore, it is unlikely that entry requirements by coastal States, which in reality can justify refusal of access, without regard to other criteria, can relieve the coastal State of its responsibilities under international law⁵² or under the emerging regime for places of refuge.⁵³ A final, more practical, observation with respect to such requirements relates to the presumed negative consequences the measure would have, should the owner agree, on the application of the existing liability and compensation mechanisms. Uncertainty about the owner's liability would probably persist until a final judgment is given, which may well complicate and delay the role of the IOPC Fund and, thus, the compensation of other victims of the pollution.

4.3.2 Voluntary commitment worked out in advance

Another – more forthcoming – variant of a voluntary solution is based on an agreement between the parties involved, worked out in advance by way of a common understanding. One could, for example, think of an undertaking by the P&I Clubs, developed in co-operation with coastal States, that in specific (clearly defined) place of refuge situations, liability insurers will indemnify the liabilities and losses of the State which result from damage incurred in the course of the place of refuge operation.⁵⁴ Financial security requirements are not, as such, excluded by the IMO Guidelines.⁵⁵ Such

⁵² Irrespective of the status on customary law on this topic, a number of specific obligations which may be of relevance are laid down in various international conventions on the protection of the environment. Among those stemming from the law of the sea, the prohibition of transferring, directly or indirectly, damage or hazards from one area to another (Article 195) would still persist, as would the State's liability for any enforcement action which is "unlawful or exceed those reasonably required in the light of available information" (Article 232). Moreover, even if it is considered that the law of the sea admits a right for coastal States to place additional entry into port requirements of this kind on ships in distress, that right cannot, under UNCLOS Article 300, be abused.

⁵³ Requirements relating to the liability of the owner and others go beyond the scope of the IMO Guidelines and EU legislation for the time being. The denunciation requirement in the example above would thus not as such conflict with those provisions. That does not exclude, however, that the application of such a requirement could be incompatible with the technical criteria established for the purpose of assessing place of refuge situations, in particular if it would affect, let alone negate, the relevance of those criteria.

⁵⁴ See also S. Hetherington, note 35 above, mentioning P&I letters of comfort or letters of undertaking as a potential model. Here it is noted that in some instances P&I Clubs do provide such guarantees, but that they are likely to oppose any guarantees which would waive any reliance on applicable limitation rights.

⁵⁵ See in particular the last point of Appendix 2, para 2.2, suggesting that the authorities pose themselves the question: "[i]s a bank guarantee or other financial security acceptable to the coastal State imposed on the ship before admission is granted into the place of refuge?" See also the text at note 61 below. Specific requirements on (potentially sizeable) financial guarantees are imposed through Articles 22 and 23 of the Spanish Royal Decree 210/2004 (note 50 above), implicating a wide number of parties (ship operator, owner, salvor or cargo interests). See also Article 8(2) of the environment liability Directive (note 17 above), providing that the authority "shall recover, inter alia, via security over property or other appropriate guarantees from the operator who has caused the damage or the imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions taken under this Directive".

arrangements ought to be feasible, in light of the fact that P&I cover generally by far exceeds the owners' liability limits as set out in the conventions.⁵⁶ In order not to confuse the operation of the CLC/IOPC Fund system too much, this should probably be limited to the coastal State authorities only and should not affect the compensation of any other victims of the incident. To avoid double compensation, the agreement should also be based on a corresponding commitment on behalf of the coastal authorities not to seek compensation from other sources (i.e. the IOPC Fund). In this form, the arrangement would not hamper the compensation of other claimants in any way, but would, on the contrary, make more compensation available to them by relieving the IOPC Fund from the authorities' claims. Here too, however, widespread acceptability of the requirements is essential to ensure their legal legitimacy and to prevent the risk of defeating the purpose with the emerging regime for places of refuge.⁵⁷ An application of this method which is narrower in scope would be an agreement to make use of this additional cover exclusively in cases where the IOPC Fund (including the Supplementary Fund) does not apply or does not fully compensate the damage caused. As far as oil is concerned, this would be a very cheap sacrifice for insurers, given that all EU States are likely to participate in the Supplementary Fund very soon.⁵⁸

Throughout the history of maritime pollution liability, the compulsory regime has been complemented by more informal agreements involving the liability insurers.⁵⁹ Could not places of refuge be another of those cases? It ought to be feasible, not least as the admittance of a ship into a place of refuge in the end is designed to avoid or to mitigate damage, which is clearly an interest which shipowners and liability insurers can be expected to share for commercial reasons. A more politically flavoured argument in favour of such a solution relates to the imbalance between compensation by the Fund (oil receivers) and by the shipowners, which has been repeatedly addressed

⁵⁶ In the case of oil pollution liability, owners are covered for legal liabilities up to US \$ 1 billion, but have a *de facto* unbreakable right to limit their liability to something between \$ 6 and 150 millions, depending on the size of the tanker. This insurance cover is thus only 'virtual' in places where the CLC applies. Otherwise, P&I cover is capped at \$ 4,25 billion for one single event. See e.g. the references given at <http://folk.uio.no/erikro/WWW/HNS/hns.html>.

⁵⁷ Cf. notes 8 and 52 above. It could also be noted that when it comes to the *release* of detained ships, UNCLOS contains a number of provisions stressing the importance of the reasonableness of any requirement on a bond or financial security (see e.g. Articles 73(2) and 226(1)(b)) and even contains a fast-track procedure for an international court or tribunal to assess the reasonableness in this regard (Article 292). It appears justified to assume that the requirement of reasonableness applies to securities required for the entry into ports as well, in particular if the entry is not 'voluntary' in nature. (In this sense, Articles 218(1) and 220(1) limit the port State's environmental enforcement jurisdiction to ships which are 'voluntarily' in their ports or terminals.)

⁵⁸ See note 15 above.

⁵⁹ For the latest example, see the 'Small Tanker Oil Pollution Indemnification Agreement' (STOPIA), in which the P&I Clubs have agreed to raise the limits of the compensation of small tankers in States where Supplementary Fund applies. See, IOPC Doc. 92FUND/WGR.3/14/7, Annex II.

lately.⁶⁰ Would not a solution to make additional compensation available in a port of refuge situation go some way towards addressing that imbalance?

4.4 *Legislation which could be applied at a regional level*

4.4.1 Financial guarantee requirements

The prospective solutions need not necessarily be in the form of voluntary commitments to be legally defensible under the existing liability regimes. Various ‘exclusivity clauses’ of the CLC and HNS Conventions seek to ensure that the parties involved in the incident are protected from any additional liability or claims apart from those laid down in the conventions.⁶¹ These clauses, however, rule out additional *compensation claims* for pollution damage, not requirements on additional *financial security*. Clearly, it may be difficult, in the absence of a specific agreement to that effect, to convince the liability insurer or courts of the lawfulness in effectuating any financial security which is based on the same liability principles as the IMO conventions. Yet, there may be solutions outside the framework of liability and liability insurance. If the main interest of the coastal State is to preclude the risk of major financial losses which might arise from its decision to assist the ship and the environment at large by offering access to a place of refuge, the question of fault or liability might not be of primary relevance anyway. Leaving such questions aside opens up the door for solutions which can be sought outside the traditional concepts of marine insurance.

One solution could be to require ships to have a specific *accident* insurance policy as a condition for being accepted into a place of refuge. Such insurance could be underwritten on an *ad hoc* basis, or perhaps preferably, could form part of the more general insurance requirements for ships trading to or from EU ports. This type of insurance would presumably not be provided by the ship’s liability insurer, but could be purchased on the commercial insurance market and could hence be specifically designed for the purposes of meeting the coastal State’s concerns about financial exposure in places of refuge situations. The more detailed terms of such insurance policies would have to be laid down separately, if possible in agreement with a larger group of States. The limitations on entry into port requirements which follow from international law would apply for this type of financial guarantee as well, but as opposed to the measure discussed in section 4.3.2 above, this one entails

⁶⁰ See e.g. IOPC Doc. WGR.3/19/1 of 27 January 2004 submitted by Australia, Canada, Finland, France, the Netherlands, New Zealand, the Russian Federation and the United Kingdom, and the views of the European Parliament in the context of the environmental liability Directive, note 18 above.

⁶¹ CLC Article III(4) and HNSC Article 7(4) provide that “[n]o claim for compensation for pollution damage shall be made against the owner otherwise than in accordance with this Convention”. The owner’s right to limit his liability is lost only “if it is proved that the pollution 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 occur” (CLC, V(2), HNSC, 9(2)). A similar protection from claims is offered to a range of other parties (including charterers, operators and managers of the ship as well as salvors and pilots) who are not subject to any liability at all (CLC, III(4), HNSC 7(4)).

the advantage, from the authorities' point of view, that the security is not as dependent on specific consent or collaboration by the owners or their liability insurers, nor is it limited to cases where compulsory insurance or P&I cover is already in place.

A risk with this sort of additional insurance from a different source is that it may complicate the functioning of the institutions already in place for compensating damage. This is a real risk, but such problems could probably be minimised through a careful drafting of the terms of the insurance policy. Here too, the insurance could – and probably should – be restricted exclusively for the benefit of the public authorities of the coastal State. In its widest form it could cover any eligible compensation claims brought against the Government authorities as a result of the accommodation of ship in distress. As a more narrow alternative, it could be limited to expenses or losses which are not covered by existing compensation mechanisms.

However, many issues relating to the feasibility of this idea, notably with regard to its acceptability by the insurance industry, are yet to be analyzed. Discussing it here only serves to show that there may well be solutions available to ease the potential concerns of coastal States outside the traditional P&I insurance framework.

4.4.2 Regional rules on liability

As noted above, many issues relating to the application of the existing international rules in the end depend on the national law of the States concerned. With respect to the international liability system in place, this is notably the case for the eventual success of recourse actions against the State by the shipowner or the Fund, but may extend to various other matters of interpretation as well. Claimants may also choose to sue the public authorities directly, outside the existing international liability framework. The role of domestic law is obviously even more significant for matters which are outside the scope of applicable international compensation regimes. As opposed to most other groups of States, EU Member States have a legal framework in place for harmonising their national laws in this respect, which might be used as a tool for reducing potential concerns related to places of refuge.

An EU Regulation specifically exempting Member States from any liability in cases where they accept a ship into a place of refuge is probably not realistic. The extent to which public authorities can be held liable varies considerably among EU Member States, but it seems improbable that any of the legal traditions would admit such a complete exclusion of liability, independently of an assessment of the alleged unreasonableness or negligence by the authorities.⁶² With the appropriate limitations, however, EU measures

⁶² See also the restraints imposed by UNCLOS Article 232, quoted in note 28 above, providing for liability for measures “which are unlawful or exceed those reasonably required in the light of the available information” and requiring States to “provide recourse in their courts for actions in respect of such damage or loss”. Similar restrictions could also stem from other branches of international law, such as human rights law and, in the case of the EU, from internal measures, such as the Directive on environmental liability (see in particular note 27 above).

seeking to increase the protection of coastal States in place of refuge situations need not be excluded. A more focused measure aimed at minimising the risk for recourse actions by the shipowner or the Fund, for example, might well be feasible. Such a measure could also extend to a common policy among EU Member States with respect to reservations to the LLMC Convention and their application in place of refuge situations, and possibly to other matters which are not yet conclusively regulated in the international maritime liability regime.

4.5 *Compensation beyond incidents*

Another option which has been floated in the recent discussions relates to *advance* compensation of Communities which have been designated places of refuge.⁶³ This option shall not be further discussed here, as it is not related to existing maritime liability and compensation regimes. Suffice it to note that while this option would probably change the attitude of some local communities when it comes to the *designation* of places of refuge, it is by no means a guarantee that it will affect the willingness of the authorities concerned when it comes to *implementing* the responsibilities arising in an individual distress situation.

A more targeted modification of this idea is that ports and other coastal authorities should be financially encouraged to improve their facilities to deal with ships in distress. It is generally for public authorities to bear the costs for the preparedness and response capacity which is required by various international instruments.⁶⁴ Clearly, there is nothing to prevent the EU from establishing a fund, specifically designed for places of refuge, to help financing coastal States' response equipment and other capabilities to receive ships in distress. Such a fund could supplement the existing EU-wide co-operation framework for marine pollution⁶⁵ and could, in line with the 'polluter pays principle',⁶⁶ be financed by ships calling at EU ports, either generally or in a more targeted fashion by focusing on specific high-risk ships.⁶⁷ The fee could be collected on the basis of individual port calls, or perhaps in the form of long-term 'subscriptions' providing the ship with a certificate to be verified in EU ports. The European Maritime Safety Agency, which has recently been endowed with tasks relating to pollution

⁶³ See para. 10 of the European Parliament Resolution of September 2003, note 13 above, calling for 'financial compensation of safe havens'.

⁶⁴ Such as the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation and the 2000 Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances.

⁶⁵ Established by Decision 2850/2000/EC on a Community framework for cooperation in the field of accidental or deliberate marine pollution, OJ 2000, L 332, p. 1.

⁶⁶ This principle, which is already codified in a multitude of international environmental conventions, is also a cornerstone of the EU environment policy, as spelled down in Article 174(2) of the Treaty establishing the European Community.

⁶⁷ Such as oil and chemical tankers only, for example. It is also conceivable to include cargo interests in the funding, for example based on the contributions paid by EU-based receivers to the IOPC and (future) HNS Funds.

response,⁶⁸ could be well-placed to administer such a fund. At the national level there are several such mechanisms in place, which may well serve as models for the purpose.⁶⁹ A major advantage with such an EU place of refuge fund is the flexibility with regard to its potential uses. Apart from assisting in ensuring the availability of facilities and response equipment for receiving ships in distress, it could also serve to indemnify coastal States for potential financial losses incurred while accepting ships into a place of refuge. This, in turn, might well reduce the need for many of the other potential solutions described in this chapter.

5 Conclusion

Liability and compensation are perhaps not among the most pressing issues in the on-going discussions on places of refuge. The key to establishing a more solid legal framework lays in clarifying the legal relationship between the right of a ship in distress to access a place of refuge and the right of the coastal authorities to refuse such access, and to codify the criteria to be applied in the assessment. Ideally, liability and compensation rules should only play a limited role in this context. Their role should be to encourage and support decisions made on sound technical-environmental grounds in the individual place of refuge situation and to discourage the opposite. At any rate, liability and compensation rules should not have the effect of discouraging the accommodation of ships in distress by entailing sizeable financial risks for the coastal State.

The view put forward in this article is that the existing legal framework does not adequately live up to those standards. This is particularly the case with respect to risks associated with incidents and substances which are not covered by any international liability and compensation regime. Here, the accommodation of ships in distress may involve considerable financial risks for the coastal State and the situation varies widely from one State to another. Even where international regimes are in place, however, there are a number of instances in which the relationship between the accommodation or refusal of

⁶⁸ Regulation 724/2004 of 31 March 2004 amending Regulation 1406/2002 establishing a European Maritime Safety Agency, 2004 OJ L 129, p. 1. According to a new Article 1(3) the Agency's shall, among other things, "support on request with additional means in a cost-efficient way the pollution response mechanisms of Member States, without prejudice to the responsibility of coastal States to have appropriate pollution response mechanisms in place and respecting existing cooperation between Member States in this field."

⁶⁹ The Finnish Oil Pollution Compensation Fund (established by Act No. 379/74, as amended) is particularly illustrative for the purpose. Interestingly, Section 2(1) of the Act makes the fee to be paid by "whosoever declares the oil for customs clearance" dependent on the type of ship involved, by providing that "[a] double charge shall be collected if the oil is transported in a tanker vessel not fitted with a double bottom over the entire cargo hold".

Another example is represented by the Japanese Maritime Disaster Prevention Center (MDPC), which is funded jointly by government and industry. Oil tankers entering terminals in Japan are required to ensure that they have access to available response equipment, provided by the MDPC, and shall participate in the funding for this purpose. See the website of the International Tanker Owners' Pollution Federation, www.itopf.com/country_profiles.

a ship into a place of refuge and the existing maritime liability and compensation regimes is unclear, which may contribute to reluctance on behalf of the coastal State authorities. Current initiatives within the IMO, EU and elsewhere to clarify the roles and responsibilities of the various players involved in a place of refuge situation will probably not be without effect on matters of liability and compensation. In particular, the establishment of new criteria and obligations for coastal States when deciding whether and how to admit a ship into a place of refuge will presumably raise the standard of care expected of the State in charge. It is too simplistic, therefore, to argue that coastal States need not worry about accommodating ships in distress into a place of refuge, since any compensation will be paid by the CLC/Fund system. On the other hand, it is equally simplistic to believe that a coastal State could avoid legal consequences or financial exposure by simply refusing access to ships in distress without having regard to the particularities of the case.

In light of the foregoing, coastal States may consider that the existing liability regime does not offer sufficient protection against their own financial exposure in place of refuge situations, and that the new standards placed on them through the emerging regime on places of refuge justify additional measures. On those premises, some proposals by which coastal States could improve their protection against potential financial exposure have been considered. Some of the proposals build upon existing regulatory instruments, ranging from 'soft law' solutions such as IOPC Fund Resolutions through reservations to restrict the applicability of the LLMC to more formal treaty amendments. Various new measures are also reviewed, both voluntary ones building on commitments by the maritime industry and mandatory requirements to be introduced in coastal States' or EU legislation, or as new elements in existing conventions. Finally, some solutions through which coastal States' capabilities to accommodate ships in distress could be financially encouraged have been discussed.

The ideas put forward in the article are not intended to represent ready-made solutions. The matter is far too complex for that. Many of the measures discussed in the previous chapter are only ideas at a very early stage of development. Not all of them may be feasible or even desirable. Yet, the 'shopping-list' provided above can hopefully help to illustrate that the potential range of solutions has by no means been exhausted so far. Perhaps it can provide inspiration for Governments and industry representatives and others who are currently involved in considering various ways of addressing the issue at the international and EU level. The proper financial protection of coastal States accommodating ships in distress is a real issue which deserves to be properly analyzed. At the early stage of any analysis, some 'brainstorming' is usually helpful. The ambitions of this article have been confined to that particular phase of the process.

IMO GUIDELINES ON SHIPOWNERS' RESPONSIBILITIES IN RESPECT OF MARITIME CLAIMS

1. Definitions

1.1 In these guidelines:

.1 "cargo claims" means claims in respect of loss of, damage to, or delay in the delivery of cargo carried by sea;

.2 "insurance" means insurance with or without deductibles, and comprises, for example, indemnity insurance of the type currently provided by members of the International Group of P&I Clubs, and other effective forms of insurance (including self-insurance) and financial security offering similar conditions of cover;

.3 "insurer" means any person providing insurance for a shipowner;

.4 "Limitation Convention" means the International Convention on Limitation of Liability for Maritime Claims 1976, including any amendment that is in force internationally;

.5 "relevant claims" means the claims referred to in Article 2, paragraph 1, of the Limitation Convention, except for cargo claims;

.6 "shipowner" means the owner of a seagoing ship, or any other organization or person who or which has assumed responsibility for the operation of such a ship; and

.7 "gross tonnage" is calculated according to the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships 1969.

2. Scope of application

2.1 Shipowners are urged to comply with these guidelines in respect of all seagoing ships of at least 300 gross tonnage. Shipowners are also encouraged to comply with the guidelines in respect of ships of less than 300 gross tonnage.

2.2 These guidelines do not apply to any warship, naval auxiliary, or other ship owned or operated by a State and used, for the time being, only on government noncommercial service, unless that State decides otherwise.

3. Shipowners' responsibilities

3.1 Shipowners should arrange for their ships insurance cover that complies with these guidelines.

3.2 Shipowners should also take proper steps when relevant claims arise in connection with the operation of one of their ships.

4. Scope of insurance cover

4.1 Shipowners should ensure that liability for relevant claims up to the limits set under Article 6 and 7 of the Limitation Convention is covered by insurance. If, however, the shipowner may invoke a limit of liability lower than that set by the Limitation Convention, the insurance need only respond up to that lower limit.

4.2 To satisfy the previous paragraph, the insurance need respond only if:

- .1 the shipowner's liability has been established at law; and
- .2 the shipowner has complied with all the conditions of cover prescribed under the insurance contract.

5. Certificates

5.1 Shipowners should ensure that their ships have on board a certificate issued by the insurer. Where more than one insurer provides cover for relevant claims, a single certificate confirming the identity of the main liability insurer is sufficient.

5.2 As a minimum, the certificate should include:

- .1 the name of the ship;
- .2 the ship's IMO number;
- .3 the name of the insurer;
- .4 the place of business of the insurer;
- .5 the name of the assured and co-assured, if known; and
- .6 an attestation that the insurance meets the recommended standards set out in these guidelines regarding the risks covered by that insurer.

DISCUSSION PAPER OF THE INTERNATIONAL ASSOCIATION OF PORTS AND HARBORS

1. Obligation to offer a place of refuge to a ship in distress?

The need to express this obligation in a rule of international law

Within the context of this question it is important to note that opinions differ as to whether international (customary) law obliges a coastal state to admit a ship in distress to a place of refuge that falls within its jurisdiction. A place of refuge may be an anchorage in quiet coastal waters, such as a bay or fjord, fitted with a floating dock or otherwise, but usually it will be a harbor or a basin in a port.

The International Association of Ports and Harbors (IAPH) regards the existence of such ambiguity as undesirable. This is because such ambiguity is crippling in a crisis situation, where the decisions taken must be based on a system that enjoys broad support in the international community while also satisfying a balanced consideration of all of the interests involved.

In particular we would refer to the different views held in the academic debate on this matter. In his article “The Obligation to Offer a Place of Refuge to Ships in Distress”, Prof. E. Van Hooydonk identifies the following four approaches:

1. the absolute right of access
2. the absolute right of refusal
3. balancing rights
4. good management on the basis of the right of access.

This range of views leaves too much leeway. The key topic is to come to one clarifying framework with criteria in order to assess whether there exists an obligation to offer a place of refuge to a ship in distress or not. The IAPH believes that this framework should be based on a “balance of interests on a case by case basis”. In this approach a ship has no absolute right of access and neither does the coastal state have an absolute right to refuse access to a ship. It is a system which takes into consideration the various interests and risks involved. The relevant interests and risks include, on the one hand, life, the maritime environment and the property involved and, on the other hand, the risks and related interests that play a role in the specific place of refuge to which access is sought. A duty to grant a place of refuge exists when the balancing of these interests and risks tips in favor of the ship and the maritime environment.

The IAPH considers it very important that this “balance of interests on a case by case basis” gains acceptance as an internationally supported approach. Reaching agreement on this approach is the best guarantee that

decisions will be taken in future not only carefully but also in a way which counts on international support. The necessity to reach international acceptance is an argument for establishing a rule of international law on places of refuge. Such a rule should be the “trailer” in which the approach is laid down. Even if there were to be no certainty of securing a sufficient number of ratifications for such a rule, its establishment and the debate surrounding it could in itself produce a broadly supported international approach of responding to ships in distress solely in the manner that has been propagated.

In conclusion: the IAPH is therefore arguing for the establishment of a rule of international law in order to create clarity on the existence of rights and obligations to offer a place of refuge to a ship in distress.

2. Insurance and financial security

The need for a supplementary regime

The IAPH has understood this question to mean whether, when a ship in distress is admitted to a place of refuge (which may be a harbor, a bay, an anchorage or a port basin) and then causes damage (for instance the cost of preventive measures, cleaning up pollution, cleaning up port equipment or stagnation damage due to social and economic activities coming to a halt in and around the place of refuge) the existing liability and compensation system is sufficient to cover such damage.

Firstly it should be noted that, following the entry into force of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (1996) and the International Convention on Civil Liability for Bunker Oil Pollution Damage (2001), the existing liability and compensation system will offer an adequate solution for various types of cargo.

The IAPH has therefore regularly urged that the two aforementioned conventions be speedily ratified.

Furthermore, a Wreck Removal Convention (WRC) would also have a certain supplementary effect in this respect. This is because, after being admitted to a place of refuge, a ship in distress may be lost and qualify as a wreck within the meaning of the WRC, as a consequence of which its regime will apply. However, it is questionable whether a WRC will ever come into being. As you will know, there have been many years of debate about such a convention without there yet being certainty such a convention being established. Naturally it is also questionable whether, once adopted, a WRC would apply under all circumstances to ships in distress that have become wrecks and whether, as is sometimes argued, it can actually be regarded as the final piece in the compensation “jigsaw” in respect of ships in distress.

It is also important to note that there are a number of cargo types for which the existing and coming regimes offer no assistance where damage arises in excess of the liability limits. This in fact means all cargo types other than oil, HNS or bunker oil.

Furthermore, even if these regimes do apply, some types of damage do

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not qualify or qualify fully for compensation. No compensation is given for instance for economic damage caused when a ship in distress is admitted to a place of refuge and then blocks the port basin as a consequence of which economic life will hamper. Only the lower limits of the LLMC are applicable to compensation claims for such damage.

The key question is therefore whether the continuation of this situation is desirable. The IAPH believes that it is not.

The most important consideration underlying this conclusion is that the IAPH believes there ought to be no discretionary freedom regarding whether or not to admit a ship in distress to a place of refuge. This is because the ship must be admitted if the “balance of interests on a case by case basis” tips in favor of the ship and the maritime environment.

This “no choice position” deviates in principle from the normal position in commerce, where states and ports enjoy a measure of commercial freedom as to whether or not to grant a ship access to, for instance, a port. Because there is no choice in such a crisis situation where the balance tips in favor of the ship in distress, those who find themselves in that position should not be left to suffer the consequences if they incur damage that cannot be recovered in any way whatsoever.

The IAPH therefore believes that this gap in the existing compensation system should be filled. There are two possible ways to do so. Firstly, the existing systems could be taken as a starting point and modified in such a way as to eliminate the gaps that have been identified. Secondly, a separate regime could be created for non-compensable damage caused by a ship in distress in a place of refuge. Such a regime would then take effect only once the existing compensation systems had been applied and insofar as they did not lead to compensation for the relevant damage.

The IAPH supports the establishment of such a separate compensation system covering all potential risks connected to admitting a ship in distress into a place of refuge. It is obvious that an adequate compensation system neutralizes the objective argumentation to refuse a ship in distress access to a place of refuge on the basis of protecting an interest that could be damaged if it were to be admitted. In other words, in a situation where there is solely a weighing of monetary risks in the “balance of interests on a case by case basis”, the compensation system forces into a decision of admitting the ship.

Finally in this connection we would note that the IAPH has some hesitations about a so-called salvage reward for ports. The main issue on places of refuge is creating a clarifying framework concerning the obligation to offer a place of refuge to a ship in distress together with the establishment of a separate compensation system. The IAPH believes that granting access to a ship in distress to a place of refuge should not be the result of the stimulation on the basis of an incentive: a ship in distress should be admitted or refused access on the basis of a careful balancing of interests as described in section I of this document.

Related Issues

In this context attention is drawn towards the following two related subjects:

- (a) The liability position of the authority granting or refusing a place of refuge to a ship in distress.
 - (b) The financial and security position of places of refuge related interests.
 - (a) The liability position of the authority granting or refusing a place of refuge to a ship in distress. As will be worked out in 4. *Mechanism of Decision Making*, IAPH is in favor of creating a special authority who will exercise the decision to grant or refuse access to a place of refuge. The powers of such an authority or an agent are formally derived from the national state and should be exercised on the basis of the “balance of interests on a case by case basis” as proposed in 1. *Obligation to offer a place of refuge to a ship in distress?* This authority or agent should of course possess nautical-maritime knowledge and act with distance from the political field in order to depolitisise the decision making process. The related question is whether those who suffer damage as a consequence of the decision taken by this authority can claim damage from this authority. In some papers the proposal of immunity for this authority from claims for compensation is brought into discussion. In order to create a proper debate about this immunity one should bear in mind that if the decision making process is modeled via the “balance of interests on a case by case basis”, this decision will be an objective one. It will be a decision which is transparent and verifiable and assessable in a legal procedure. Further it is relevant that a debate about immunity addresses two situations:
 - (1) The decision to grant access to a ship in distress.
 - (2) The decision to refuse access to a ship in distress.
 - (b) The financial and security position of with places of refuge related interests. IAPH understands that the driving force behind immunity is to facilitate the decision making process. Strongly related to this subject is of course how to protect the involved interests in case shelter is found there where other interests than those of the decision taking agent or authority are at stake. In most of the cases a place of refuge for a ship in distress is a port basin or a harbor. These inland waters are not owned and/or managed by the agent or authority taking the decision but owned and/or managed by separate public or private entities. As these entities have to undergo the decision to grant access to a ship to its port basin or harbor, a pivotal subject is how to find a solution to protect these interests. These interests concern:
 - (1) The financial costs to accommodate the ship in distress.
 - (2) The financial consequences of the operation as far as are concerned damages including economic damage caused by the ship to the port and to the related interests such as port customers.
- A system in which an agent or authority takes the decision to grant

access to a ship in distress only works if this authority also takes the full responsibility for the financial consequences of this decision. The authority itself is in the position to recover these damages on the basis of existing compensation schemes. In IAPH' opinion this approach should be included in the decision making process where an agent or authority other than those managing and/or owning the specific place of refuge takes the decision to grant access to a ship in distress.

3. Designation of places of refuge

- (a) Should places of refuge be designated in advance or not?
- (b) If not, should there exist any criteria in the contingency plans of the Coastal State or determining the place of refuge in a specific case?
- (c) If places of refuge are determined in advance, should such places of refuge be publicised or not?

(a) Should Places of Refuge be designated in advance or not?

Quiet coastal water, a bay, a fjord, a harbor or a port basin, it all can be considered as a potential place of refuge. Next to that no two marine casualties are the same and while factors such as depth of water, suitable anchorage, shelter, and availability of shore facilities will be common matters for consideration in every case, the requirements of the particular vessel and the nature of her distress will always be different. Whether or not a particular bay, fjord, harbor or port basin will suit as a place of refuge in a specific situation depends on the outcome of the "balance of interests on a case by case basis" as proposed in *1. Obligation to offer a place of refuge to a ship in distress?* In other words, there has to be a match between the ship in distress and the risks it generates on the one hand, and the merits of the specific place of refuge on the other. In this respect it is questionable whether or not it is sensible to designate places of refuge in advance because such a list should cover all bays, fjords, harbors and port basins.

However, it could for operational matters be unadvantage to know what other than the objective merits a potential place of refuge has to offer. These objective merits like depth etc. can be derived from open sources. For operational matters it is also useful to know which specific pollution combat equipment and shore facilities are available in or near a place of refuge. These equipment and facilities will improve the prospect of a bay, a harbor etc. as a place of refuge. This operational motive to have this knowledge available before hand, is a strong motive to bring this knowledge in the open domain.

(b) If not, should there exist any criteria in the contingency plans of the Coastal State for determining the place of refuge in a specific case?

Whether or not a bay, fjord, harbor or port basin is designated in advance or not, a Coastal State should always have available contingency plans for the operational situation in which a ship in distress seeks refuge in its coastal or inland waters. A major objective of these plans is to come to a decision concerning the match between the risks and threats concerning a ship seeking

refuge, and a place of refuge which can be offered to her. Form the system of methodology it is fruitful to have an inventory of specific places of refuge in the contingency plans. Whether or not these potential places of refuge can offer a solution of course depends on the outcome of the risk assessment in a specific case.

(c) If places of refuge are determined in advance, should such places of refuge be publicised or not?

Under *(a) Should Places of Refuge be designated in advance or not?* it was envisaged that quiet coastal water, a bay, a fjord, a harbor or a port basin, all can all be considered as a potential place of refuge. These places can all be known from what is already available in the open domain. For operational reasons it is for shipowners, masters and salvage companies more useful to know what specific pollution combat equipment and other facilities are available in or near specific potential places of refuge.

4. Mechanism of decisionmaking

Should Coastal States establish in advance a mechanism about:

- (a) Allowing or refusing entry to a distressed ship.
- (b) Determining a specific place of refuge; and
- (c) The measures to be taken generally concerning salvage, protection, etc.

Should Coastal States establish in advance a mechanism about:

- (a) Allowing or refusing entry to a distressed ship, and*
- (b) Determining a specific place of refuge; and*

A Coastal State should always have available contingency plans for the operational situation in which a ship in distress seeks refuge in its coastal or inland waters. The IMO Guidelines on Places of Refuge (adopted by the Assembly of IMO in its 23rd Session) act as a strong impulse to come to such plans and offer input for this. These contingency plans act as a tool to come to the objective decision making on the basis of the “balance of interests on a case by case basis” as proposed in this paper under *1. Obligation to offer a place of refuge to a ship in distress?*

Next to that IAPH is in favor of creating a special authority which will exercise the specific decision to grant or refuse access to a place of refuge to a ship in distress. The powers of such an authority or agent are formally derived from the national state and should be exercised on the basis of the “balance of interests on a case by case basis” as referred to under *1. Obligation to offer a place of refuge to a ship in distress?* This authority or agent should of course possess nautical-maritime knowledge. Above that this authority or agent should act with distance from the political field in order to depoliticise the decision making process. The allocation of the competence to grant or refuse access to a ship in distress in this way has major advantages: it will create a situation in which the decision is taken isolated from non-related interests and accelerate the decision making process.

(c) *The measures to be taken generally concerning salvage, protection, etc.*

The measures to be taken generally concerning salvage, protection, etc., and abstracted from a specific situation, are under the competence of the legislative authority of a national state. In most of the cases this subjects fall in the domain of a national department concerning transport or seaways. This subject is very broad and could even include the preparation of reception facilities for ships in distress (see item 8). Next to that the measures to be taken by salvage operators will be embedded in the contractual relationship between the salvage company and the ship owner and/or a national state.

5. Civil liability

Who has the liability for damage caused by a pollution incident after a place of refuge has been granted or refused?

- (a) Will the ship in distress be responsible for pollution damage caused and under what conditions once a place of refuge has been granted?
- (b) Will the State allowing entry to a vessel in distress have any liability?
- (c) Will the State denying a place of refuge to a distressed ship have any liability?
- (d) What are the responsibilities of Salvors?

(a) *Will the ship in distress be responsible for pollution damage caused and under what conditions once a place of refuge has been granted?*

Prior to answering this question is the preferred policy how to deal with the financial consequences connected with giving shelter to a ship in distress in a place of refuge. As already enlightened under 2. *Insurance and Financial Security* IAPH opts for a compensation system covering all potential risks connected to admitting a ship in distress to a place of refuge.

The most important consideration underlying this policy is that the IAPH believes there ought to be no discretionary freedom regarding whether or not to admit a ship in distress to a place of refuge. If in this “balance of interests on a case by case basis” the balance tips in favor of the ship and the maritime environment, the ship has to be admitted.

This “no choice position” deviates in principle from the normal position in commerce, where national states and ports enjoy a measure of commercial freedom as to whether or not to grant a ship access to, for instance, a port. Because there is no choice in such a crisis situation where the balance tips in favor of the ship in distress and the maritime environment, those who find themselves in that position should not be left to suffer the consequences if they incur damage that cannot be recovered in any way whatsoever. Next to that, an adequate compensation system neutralizes the objective argumentation to refuse a ship in distress access to a place of refuge on the basis of protecting an interest that could be damaged if it were to be admitted. In other words, in a situation where there is solely a weighing of monetary risks in the “balance of interests on a case by case basis”, the compensation system forces into a decision of admitting the ship.

From a systematic point of view there are two possible ways to come to

a compensation system covering all potential risks connected to admitting a ship in distress into a place of refuge. Firstly, the existing systems could be taken as a starting point and be modified in such a way as to eliminate the identified gaps. Secondly, a separate regime could be established for non-compensable damage caused by a ship in distress in a place of refuge. Such a regime would then take effect only once the existing compensation systems had been applied and insofar as they did not lead to compensation for the relevant damage. IAPH supports the creation of such a supplementary compensation system.

(b) Will the State allowing entry to a vessel in distress have any liability?

This question cannot be seen apart from how the decision making process for allowing or refusing entry to a ship in distress is organised. As explained under 4. *Mechanism of Decisionmaking* IAPH prefers the establishment of a separate authority or agent on national level which exercises the specific decision to grant or refuse access to a place of refuge to a ship in distress. The powers of such an authority or agent are formally derived from the national state and should be exercised on the basis of the “balance of interests on a case by case basis” as referred to under 1. *Obligation to offer a place of refuge to a ship in distress?* A system in which an authority or agent takes the decision to grant access to a ship in distress only works if this authority also takes the full responsibility for the financial consequences of this decision. The authority itself is in the position to recover these damages on the basis of the existing compensation and liability schemes. In IAPH’ opinion this approach should always apply where an agent or authority other than those managing and/or owning the specific place of refuge takes the decision to grant access to a ship in distress. Subsequently the authority or agent is in the position to recover all damage under the existing liability and compensation systems which position could be improved by creating a separate regime for noncompensable damage.

If it is recognized that in order to facilitate the decision making process, immunity to be granted to a national state (or its authority or agent taking the decision), is brought into discussion. It goes without saying that in the situation this immunity is granted, a fortiori this authority should take the full responsibility for the financial consequences of the operation.

(c) Will the State denying a place of refuge to a distressed ship have any liability?

If the decision making process is modeled via the “balance of interests on a case by case basis”, this decision will be a decision which is transparent and verifiable. As a consequence of this the decision will be assessable in a legal procedure. One of the by-products of this approach is that in a case of an unjustified balancing of the interests, the decision maker is civil liable (tort): it has refused access there where access should be granted, or it has granted access there where access should have been refused.

Open for debate in the context of this question is the possibility of granting to a national state immunity for its decision concerning places of

refuge. And if so, if this immunity should also encompass the situation in which entry to a place of refuge is denied. IAPH is of the opinion that immunity only should be established in a situation where it facilitates a decision which ends with admitting a ship to a place of refuge, but only when this immunity is combined with taking the decision making authority the full responsibility for the financial consequences of this decision.

6. Are there monetary incentives which can be offered by way of compensation schemes for ports accepting ships in distress?

- (a) *Insurance/security?*
- (b) *Establishment of a fund/or even a voluntary fund?*

In IAPH' opinion a port has to accept a ship in distress if under the application of the "balance of interests on a case by case basis" as proposed in *1. Obligation to offer a place of refuge to a ship in distress?* the balance tips in favor of the ship and/or the marine environment. This "no choice position" deviates in principle from the normal position in commerce, where ports enjoy a measure of commercial freedom as to whether or not to grant a ship access to its port. In the "no choice situation" where the balance tips in favor of the ship in distress, those who find themselves in that position should not be left to suffer the consequences of incurred damage that cannot be recovered in any way whatsoever. Therefore IAPH supports the establishment of a separate compensation system which acts as a supplementary regime. This regime should result in a situation where all potential risks connected to admitting a ship in distress into a place of refuge will be covered. These potential risks concern the financial costs to accommodate the ship in distress as well as the financial consequences of the operation including the damage caused to the port and to the related interests such as port customers. The regime has a supplementary character because it applies in the situation where the existing compensation regimes do not lead to compensation of the incurred damages. Open for debate is of course how to create such a supplementary regime. IAPH has not yet a clear position on the outline of such regime. A fund or an insurance or a combination of both are to be considered as starting point for a discussion on this item.

In IAPH opinion granting access to a ship in distress to a place of refuge should not be the result of the impulse of an incentive: a ship in distress should be admitted or refused access on the basis the application of the "balance of interests on a case by case basis" as proposed in *1. Obligation to offer a place of refuge to a ship in distress?*

7. Penal liability

- (a) *Should there be such liabilities; if so, in what circumstances?*
- (b) *Which Courts should have jurisdiction?*

Prior to commenting these questions IAPH asks attention for the fact that the first relevant question is what should be the object of penal liability. In other words, what will be the definitions of the breach and/or the criminal offence. Further relevant is that the key topic of *places of refuge* is to come to

one clarifying framework with criteria in order to assess whether there exists an obligation to offer a place of refuge to a ship in distress or not. One might say that only after there exists commune opinion about this key topic, it is sensible to pick up the penal liability question. IAPH commenting the question of this section 7. should be read in mind with the aforesaid.

(a) Should there be such liabilities; if so, in what circumstances?

A difference is made between the penal liability of the decision maker concerning granting or refusing access to a ship in distress to a place of refuge, and the Master of the ship in distress.

The decision maker

If the decision making process is modeled via the “balance of interests on a case by case basis”, this decision will be a decision which is transparent and verifiable. As a consequence of this is that the decision will be assessable in a legal procedure. One of the by-products of this approach is that in a case of an unjustified balancing of the interests, the decision maker is civil liable (tort): it has refused access there where access should be granted, or it has granted access there where access should have been refused. The monetary consequences of this liability should in itself generates enough impulses and incentives to come to a careful and justified application via the “balance of interests on a case by case basis”. If this opinion is correct, one might even say that a penal big stick is not necessary. One might even go a step further: penal liability works counterproductive as it will create an extra factor which decelerates the decision making process in a crisis situation. Therefore it is not without legitimization to consider penal immunity for decision making authorities who only have to envisage the “balance of interests on a case by case basis”.

The Master

What is said about the counter productivity of penal liability in case of the decision maker, also goes for the Master of the ship. The Master finds himself in a crisis situation in which he has to act on the basis of objective nautical and maritime criteria. The extra complicating factor of penal liability also decelerates his decision making process. Therefore it is also concerning the Master not without legitimization to consider penal immunity.

8. reception facilities for ships in distress

- (a) Should there be a requirement for the establishment of large (private or public) land or floating (salvage/environmental) docks to receive a distressed ship for salvage purposes and for confining risks of pollution?
- (b) Alternatively, should States designate areas within a place of refuge where a sinking or unstable casualty can be beached a part of salvage operations?

(a) Should there be a requirement for the establishment of large (private or public) land or floating (salvage/environmental) docks to receive a distressed ship for salvage purposes and for confining risks of pollution?

Places of Refuge

IAPH considers the establishment of large land or floating docks to receive a ship in distress as an important pre-active contribution in order to create suitable places of refuge. The availability of these reception facilities on specific places, i.e. not in the vicinity of vulnerable environment and residential areas could contribute to the simplification of the specific decision making process in the situation of a ship in distress seeking a place to overcome its difficulties.

In the exploration of the establishment of such reception facilities IAPH favours a geographical approach. The coastal states gathered around a nautical area or an intensive used seaway could explore the possibility of regional co-operation. These coastal states could make an arrangement on the establishment and effort so that regional co-operation becomes possible.

(b) Alternatively, should States designate areas within a place of refuge where a sinking or unstable casualty can be beached as part of salvage operations?

Within the context of the regional approach as illuminated under (a) attention should also be paid to the identification of such a special area which is particularly suitable for sinking or temporary beaching as part of a salvage operation. Again, whether or not such a particular place will suit as a place of refuge in a specification situation depends on the outcome of the “balance of interests on a case by case basis” as proposed under in 1. *Obligation to offer a place of refuge to a ship in distress?* If the question is yes, the pre-active identification of such a place will have an accelerating effect on the decision making process.

D. MARINE INSURANCE

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THE CMI REVIEW OF MARINE INSURANCE REPORT TO THE 38TH CONFERENCE OF THE CMI VANCOUVER, 2004*

JOHN HARE¹

The background to the CMI's work on marine insurance

In my summary to the Singapore conference of the CMI in 2001, I noted that some 100 years had passed since maritime lawyers last made a concerted and international attempt to agree upon the harmonisation of certain basic issues of marine insurance law. That attempt took place at the Buffalo Conference of the International Law Association in 1899, which in turn led to the adoption of the Glasgow Marine Insurance Rules in 1901.²

I reflected that throughout the twentieth century, marine insurance was practised in most parts of the world under the influence of the MIA 1906. Regional initiatives have made their mark in seeking both certainty and reform. But for many countries that inherited MIA 1906 directly or indirectly, marine insurance law has remained static and relatively stable, and that stability has been reflected in the comparative paucity of reported marine insurance cases in most maritime jurisdictions.

The relative stability of the law of marine insurance has not been mirrored in a like stability in marine insurance practice. The industry has faced many challenges, and it is to a large extent through industry pressure that lawyers in many countries have reacted to review and reform their laws of marine insurance. The most notable have been the Scandinavians, in an initiative driven by the marine insurance industry and the Scandinavian Institute of Maritime Law in Oslo. The Norwegian Marine Insurance Plan³ is a primary example of a successful a voluntary NGO initiative that now sets the parameters for marine underwriting in much of Scandinavia, and indeed elsewhere in the world. There has been much review activity in the European Union. Review initiatives have started in the USA, Australia, New Zealand,

* The draft guidelines attached are offered only as a discussion document and not for formal adoption at this stage.

¹ Professor of Shipping Law at the University of Cape Town. Chair of the CMI International Working Group on Marine Insurance. Parts of this report have been published in the *Journal of International Maritime Law* JIML 10 [2004] 2 at 167.

² Since Singapore I have tried unsuccessfully to find documentation on the Glasgow Rules. They appear to have disappeared.

³ The Norwegian Marine Insurance Plan, a contractual set of rules for marine insurance upon the terms, is at www.norwegianplan.no. For a review of the 2003 Norwegian marine insurance market and the inroads it has made on the international underwriting market, see www.cefor.no/news.

China, and South Africa (to name but a few) to examine domestic marine insurance laws. And in those countries where the MIA 1906 is most influential the evaluation began with a reexamination of whether or not the 1906 Act continued to serve the industry in the changed times and market circumstances of the approaching twenty-first century.

In the knowledge that such national review processes were gathering momentum, the CMI in 1998 took up Lord Mustill's challenge to undertake an international study of marine insurance. The CMI started the ball rolling by co-hosting, with the Scandinavian Institute, a Marine Insurance Symposium in Oslo. The symposium took the form of an exploration of common ground and diversity in issues of ship insurance. It did not deal with cargo insurance, nor did it seek answers. It was primarily an academic discussion forum. But it served to identify a number of issues of marine insurance which deserved further research. These were summed up by CMI President Patrick Griggs at the end of the symposium as:

1. insurable interest
2. insured value
3. ordinary wear and tear and inherent vice
4. inadequate maintenance, fault in design, construction or material
5. duty of disclosure, before and during currency of cover
6. consequence of loss of class, unseaworthiness and breach of safety regulations
7. warranties – express and implied, consequences of breach and alteration of risk
8. change of flag, ownership or management
9. misconduct of the assured during the period of cover
10. responsibility for conduct of others – identification
11. the duty of good faith
12. management issues, especially the ISM Code

The upshot of the Oslo Symposium was a decision by the CMI that there was sufficient indication of an emerging national diversity on these and other issues of marine insurance to warrant an international review of the law of marine insurance. An International Working Group (IWG) was set up under the chair of Dr Thomas Remé⁴ and its composition was designed to represent both underwriters and lawyers, the latter having a good mix of academics and practitioners, drawn from both common law and civilian roots.

The IWG decided at an early stage to expand its purview from examining ship-only (Hull and Machinery (H&M)) insurance as had been done in Oslo, to looking at cargo insurance as well. Under the guidance of Dr Remé, a CMI questionnaire was sent out to member associations in 1999. The review

⁴ I took over the chair from 2001, and Professor Malcolm Clarke standing in as chair during my leave of absence in 2003.

process benefited enormously from the detailed replies received from many national associations.⁵ The daunting task of evaluating the replies was undertaken by Professor Trine-Lise Wilhelmsen of the Scandinavian Maritime Law Institute. To ensure focus, the IWG resolved to concentrate initially on four issues which were identified as the ones most in need of attention:⁶

- the duty of good faith
- the duty of disclosure
- alteration of risk
- warranties.

To this was later added

- responsibility for conduct of others – identification.

The Australian Law Reform Commission has also added significantly to international scholarship with a comprehensive report on the Australian review of the Australian Marine Insurance Act 1909.⁷

Summary of the IWG's work

The central purpose of the review initiative was to identify

- Those areas of *similarity* in the approach of national legal systems to certain issues of marine insurance
- Those areas of *difference* where a measure of uniformity would better serve the marine insurance industry
- Those areas of difference where *differences provide sound reasons for competitive edge* and where seeking uniformity would be undesirable
- Those areas where *differences are profound*, and where seeking uniformity would be unrealistic.

The IWG was enjoined to seek solutions to identified problems in the law of marine insurance; these solutions would allow the law to take account of:

- 1) the role which marine insurance should play in promoting the highest internationally accepted standards of safety at sea, with particular regard for the insistence upon and enhancement of safety of all marine personnel, both seagoing and shore-based

⁵ The IWG received a boost from the attendance of delegates from 34 countries at a conference entitled 'Marine insurance at the turn of the millenium', convened by Professor Marc Huybrechts and the European Institute of Maritime and Transport Law at the University of Antwerp in November 1999. The conference papers were published by Intersentia (www.intersentia.be). The two Antwerp conference volumes contain a wealth of research material on marine insurance.

⁶ Papers have been prepared for the IWG by Mr Andrew Tulloch, (Good Faith); Mr Graydon Staring (Warranties and Conditions); Professor Malcolm Clarke (Alteration of Risk); and Professor Trine-Lise Wilhelmsen (Generally analysing the questionnaire replies and dealing extensively with nondisclosure. Professor Wilhelmsen's second paper deals with Misconduct of the Assured and Identification). All are available on the CMI website at www.comitemaritime.org/worip/marineinsurance.html and in the Singapore Conference documents at www.comitemaritime.org/singapore2/conference37/insurance/insurance.html.

⁷ This report is available on the internet at <http://www.austlii.edu.au/au/other/alrc/publications/reports/91/>.

- 2) the current economic structures within which marine insurance is underwritten, with regard to *inter alia* regional co-operation, competition and regulation such as that emanating from the EC
- 3) the differences and similarities in the civilian and common law legal systems, both in relation to the content of substantive law, procedural issues, and idiosyncrasies in draughtsmanship.

The 37th Conference of the CMI, held in Singapore in 2001 authorised the continuation of the review, but recognised that there may not be a tangible outcome to the process: it asked the group to seek either

- a measure of harmonisation which may be feasible and desirable and would better serve the marine insurance industry; or
- the dissemination by the CMI of the products of the IWG's research which would in itself promote better knowledge and understanding of such differences.

Options for reform

The on-going work of the IWG has since been presented to CMI colloquia at Toledo and at Bordeaux and informal group meetings have been held from time to time. Three possible options were debated. First, an international convention. This was soon ruled out as too inflexible and impractical in view of the undoubted national differences in marine insurance laws and in the legal backgrounds in which they operate. Second, a Model Law. This option was again ruled out as being too prescriptive a measure for an industry which is largely self regulating. The IWG may however make recommendations on the way in which it is considered best to deal legislatively with certain issues reviewed. Finally, there is the option of the recommendation of terms of cover for incorporation into marine insurance policies.

With regard to the latter, Patrick Griggs cautioned as early as at our first meeting at Oslo that our efforts should not suffer the same fate as the UNCTAD Model Clauses on Marine Hull and Cargo Insurance.⁸

Even if none of these three steps is taken, the CMI hopes that its review will inform and promote harmonisation of marine insurance policy – both in relation to drafting domestic legislation and in the revision of insurance contract terms. That this process has already taken root has given the IWG some heart. Apart from the input that the Group's work has had upon national reform initiatives (in Australia and in South Africans for a start, and in the USA discussions towards a marine insurance act for the US re-opened last year), the London market has, in its 2003 H & M terms, all but done away with the warranty and replaced it with specific terms, stipulating specific consequences.⁹ This is surely a step in the right direction, though, like it or

⁸ Certain of the UNCTAD clauses and other model clauses can be found at the Lex Mercatoria site at www.jus.uio.no/lm/private.international.commercial.law/insurance.

⁹ Thus, for example, the navigating provisions in the 2003 H&M clauses are no longer expressed as warranties. Rather, the contract stipulates expressly that underwriters are not liable

not, the 2003 terms still operate under the mantle of the English law warranty. We need to find a way to remove the silent and at times undoubtedly uninvited workings of the English law warranty in the English law 'satellite' countries.¹⁰

Legislative reform? Issues of principle

The London market's 2003 reformed hull clauses have given rise to an issue of principle in the debates of the IWG. If the law is recognised as being unjust, unfair or plain wrong, should it not be the responsibility of the lawyers to recommend changes to put that law right? Is it sufficient to point to the wrongs, and to allow the industry to put right what the lawyers got wrong in the first place? Yes, marine insurance law is relatively settled. But there are areas in which the market surely finds it very difficult to operate with any degree of certainty. The test of materiality in relation to pre-contractual non-disclosure is one. The remedy for an absence of good faith is another. And for a half a century jurists have been lamenting and lambasting the iniquitous and ubiquitous English law warranty. Are we satisfied that we have done our best as lawyers to imbue the law with certainty and equity if reform of bad laws is left to evolve slowly through the courts or through the influence of market forces? Should not today's lawyers have the responsibility to correct those bad laws created by lawyers in previous generations? How else can they serve the market in which they operate?¹¹

But there is a practical restraint: much of the content of marine insurance law derives internationally from the English 1906 Act. English lawyers are disinclined to codify or to make their laws inflexible. Prof Clarke has used the words of Lord Goff that codification "should only be undertaken where the good it may do it perceived to outweigh the harm it must do". Codification, argue many English lawyers, stifles the ability of judges to develop the law.

Yet there is an argument that judge made law is both uncertain and unpredictable. And that like good wine, it takes a very long time to mature.

(Utmost) good faith

Take the notion of good faith, examined so fully by Prof Wilhelmsen and by Andrew Tulloch: in the civilian codes, there is a requirement of good faith in all contracts. The absence of good faith generally gives rise to a remedy for the aggrieved party. Though it is usually the insurer who calls for help where

during any period of breach. Cover resumes post breach. The International Underwriting Association (IUA) in London has confirmed that the CMI's work was one of the factors which influenced their re-drafting of the 2003 H&M policy. With the kind permission of the IUA, the 2003 policies are available on the UCT Shipping Law site at www.uctshiplaw.com/fulltext/iua/iuaintro.htm. There is also a most useful comparative table outlining the differences between the 2003 terms and previous terms.

¹⁰ Upon which, see further below.

¹¹ The 2003 Donald O'May lecture on marine insurance by The Rt Hon Lord Justice Longmore echoed the call taken up in 1980 by the English Law Commission for legislative reform; see Report No. 104 Cmnd 8064, October 1980, p. 82. See also Hare *The Omnipotent Warranty: England v The World* at www.uctshiplaw.com/imicfram.htm.

the assured acts in breach of good faith, the obligation falls on both parties: the insurer, too, must act in good faith or face the consequences of its bad faith.¹² In English law the courts are more protective of the contractual adversarial rights of each party to benefit legitimately at the other's expense, and they have been reluctant to treat the absence of good faith as a stand-alone ground for relief. In marine insurance, although the English courts have created a notional higher standard of better or best faith in 'utmost good faith' the courts have shied away from giving a remedy to the victim of an absence of utmost good faith.¹³ Only recently has there been a movement in the direction of allowing relief. But the movement remains tentative. Even in *The Star Sea*¹⁴ the English House of Lords put the brakes on a generalised recognition of the right to avoid a contract where there has been an absence of (utmost) good faith. And many common law courts stop short of giving relief of any sort to the victim of a breach of the duty of good faith unless there is a fraud.¹⁵ We common lawyers vacillate, as heifers at a dip, unable to face a leap of faith to commit to the principle that an insured who acts dishonestly in his or her dealings with an insurer in relation to any material aspect of a marine insurance contract should thereafter forfeit the right to benefit from a claim – even where no fraud has taken place.¹⁶ The courts agonise between enforcing section 17 of the MIA 1906 (or its equivalent in other jurisdictions) or the common law consequences of fraud, and often back off without invoking either, reluctant to embark on what has been called 'post-contractual disciplining'.¹⁷ The message to the industry is undeniable: in many common law countries, as long as you stop short of fraud, you can stretch the truth as much as you like to serve your own ends. The insurer is fair game.

What seems to have to have been confirmed by the IWG study is already known to most marine insurance lawyers: the situation regarding good faith pervading the contract past the pre-contractual disclosure stage into alteration of risk and even claim submission is at best fraught with uncertainty, even in the same jurisdiction let alone across international practice. Andrew Tulloch concludes that

¹² The Canadian Supreme Court of Appeal recently upheld an award of R1m in punitive damages against an insurance company that maliciously defended a claim: See *Whiten v Pilot Insurance Company* [2002] 1 SCR 595, 2002 SCC 18.

¹³ See for example Eggers *Remedies for the failure to observe utmost good faith* [2003] LMCLQ 248 and Prof Bennett's comprehensive article *Mapping the doctrine of utmost good faith in insurance contract law* [1999] 2 LMCLQ at 165

¹⁴ *Manifest Shipping Ltd v Uni-Polaris Insurance Ltd* [2001] 1 Lloyd's Rep 1.

¹⁵ See for example in English law *K/S Merc-Scandia v Lloyd's Underwriters (The Mercandian Continent)* [2001] 2 Lloyd's Rep 563 and in South Africa, *Videtsky v Liberty Life Insurance Association* 1990 (1) SA 386 (W).

¹⁶ For example, where a dishonest insured did not specifically intend to defraud the insurer or where the insurer would have had to pay the claim anyway, whether or not the dishonesty had occurred.

¹⁷ *Pan Atlantic Company Limited v Pine Top* [1994] 2 Lloyd's Rep 427 and the English Court of Appeal decision in *Konstantinos Agipatos v Agnew and others - The Aegeon* [2003] QB 556 and commentary on that case by Boyer *Fraudulent Claims under Marine Policies* Int.M.L. 8 [2001] 8 258

- there should be an acceptance of mutuality in the obligation of good faith;
- the UK *Pine Top* rule of an objective test of materiality with a subjective test of inducement should be applied to non-disclosure;
- the duty to exercise good faith after contract formation should apply equally to variation and renewal of cover;
- however the duty should not apply to the claims stage because that is better dealt with by policy clauses;
- there should be no attempt to define good faith;
- ‘utmost’ should be dropped as adding no value to the concept;
- as an alternative to avoidance, each party aggrieved by a lack of good faith by the other should be entitled to claim damages.¹⁸

The English warranty

Those who dispute the need or desirability for legislative reform (and I am by unequivocal declaration not one of them!) could perhaps consider the pariah of non-English lawyers: the English law warranty.¹⁹ As Graydon Staring will point out, Section 33 of the MIA 1906 gave legislative authority to the insurance warranty developed by the English courts during the preceding century:

A warranty ... is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date.

Described as the trump card in the hands of the insurer (though perhaps more like a joker), it is no answer to aver that the industry seldom relies on a breach of warranty defence. It is sufficient that the insurer hint of the defence of an often innocent breach of a (trivial, non-causative) warranty for the insured to be pressured into settlement. The English Law Commission in 1980 declared, with characteristic phlegm ‘It seems quite wrong that an insurer should be entitled to demand strict compliance with the warranty which is not material to the risk and to repudiate the policy for a breach of it’.²⁰ It remains ‘quite wrong’ – yet 44 years later we lawyers have done nothing to right that wrong. Graydon Staring is to speak further on his research into the warranty, and he will be making some proposals as to how to deal with it internationally.

As I mention earlier, there is an argument that the common law systems favour courtmade law in place of over-regulation and that marine insurance would be better left alone to evolve itself. ‘Virtuous inactivity’ is how

¹⁸ A call echoed by Eggers *supra*.

¹⁹ On which see Hare *The Omnipotent Warranty: England v The World* at www.uctshipplaw.com/imicfram.htm and Staring *Harmonisation of Warranties and Conditions* CMI IWG paper at www.comitemaritime.org/future/pdf/harmonization_w&c.pdf.

²⁰ See n 8.

Professor Clarke describes it.²¹ The argument is that formulae and precise rules 'while 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'.²² But with marine insurance, the law is already partly codified by the MIA 1906 which has been exported to so many other jurisdictions.²³ Marine insurance law has for more than a century been more than a matter of court-made common law. Nor is the MIA 1906 a purely domestic matter. It reaches far and wide. The Act is a century old. It has some notions which have been overtaken by a much-changed world (utmost good faith is perhaps one²⁴). It has left gaps that have not been properly filled by the courts (or that have been filled with little or no uniformity among the nations that apply the Act). For example the test of materiality of non-disclosure, *Pan-Atlantic* notwithstanding. Reasonable assured? Reasonable insurer? Reasonable person? One-tier or two-tier? The tests differ from case to case and from country to country.²⁵ Maritime lawyers have a duty to the market to fill the gaps and alleviate the inconsistencies.

It is my view, though I stress this to be a personal one, that although our brief as lawyers can be done in many instances by informing the market changes that the industry then promotes, but there must be times when we must ourselves correct accepted inadequacy or confusion in our respective domestic laws, whether, in the common law systems this be judge-made law, or whether legislation - especially where they have extra-territorial influence. We do not hesitate in trying to reform and update international conventions that have become inappropriate. But we are loath to tread on the hallowed ground of domestic laws - even when that law is our own.

²¹ Professor Clarke's paper on *Alteration of Risk* produced for the IWG and at www.comitemaritime.org/future/pdf/alt_risk.pdf.

²² The Hon Mr Justice Kirby of Australia in his address to the CMI Sydney Conference, quoted in Tulloch's paper produced for the IWG and at www.comitemaritime.org/future/pdf/utm_g_faith.pdf.

²³ The Act is also applicable by reference in policies written in other countries as subject to English law, such as the Belgian Corvette Policy and most of the world's P&I cover.

²⁴ Can there be good, better and best faith? Is not good faith as profound a standard of behaviour as utmost good faith? The much quoted rejection of 'utmost' good faith by the South African Supreme Court of Appeal in *Mutual & Federal Insurance v Oudtshoorn Municipality* 1985 (1) SA 419 (AD) is perhaps not heresy after all: '*uberimae fides* is an alien, vague and useless expression without any particular meaning in law.... Our (South African) law has no need for *uberimae fides* and the time has come to jettison it'.

²⁵ *Pan Atlantic Company Limited v Pine Top* [1994] 2 Lloyd's Rep 427). In the draft guidelines which follow this document, I have proposed a two-tier objective test, the first being, as in *Pine Top*, applicable to the reasonable insurer, but the second not being the subjective actual insurer whom Lord Mustill found should have been induced to contract by the non-disclosure or misrepresentation - but rather that a reasonable assured would have regarded the breach as material. With respect to Lord Mustill, it is a mere formality for the actual insurer to prove inducement. If the actual insurer did not (retrospectively) think the breach was material it would not challenge cover. Testing both supplier and consumer objectively would appear to me to be the fairest assessment of materiality. Objectivity accords with basic principles of fairness.

Looking to the future

If one re-visits the central aim of the CMI which is to seek harmonization of international maritime laws, and if one were bolder than lawyers usually are, one could envisage a formula (dread though the concept may be to the common lawyer) around which national laws could at least tidy up aspects of their marine insurance laws. We could start with those issues of marine insurance law for which our research is complete, and we could craft guidelines of where we would like to see marine insurance go. Those guidelines, reflecting a commonality though not being prescriptive, would recognise deficiencies and lay very basic ideas for those who are now seeking to develop their laws. The guidelines could serve both legislative reform, and even judge made development of the law in common law countries. And needless to say, those who wish to follow a different route, whether for pedagogical reasons or for commercial preference, would be at liberty to go their own way.

Too inflexible? To the common lawyer, probably heresy. To the civilian, a useful definition to give content to certain domestic laws that are not doing their job properly in what is an internationalised market. Would such footsteps in the direction of better certainty, albeit on hallowed ground, be welcomed by the market – and should they be feared by lawyers. Broad guidelines could help prevent a headlong dash to new and diverging national MIA's - though one questions whether developments in marine insurance law could ever be 'headlong'.

There is another reason for reform, and a compelling one: tidying up the operation of these essential terms in marine insurance will also allow the insurance industry (and the lawyers who serve it) to play a more defined role in promoting, as a pre-condition of cover, basic tenets of safety at sea and environmentally friendly shipping. That should be an over-arching aim of all involved in maritime lawmaking.

Against this background and with some input from the IWG but by no means unanimity either as to content or to result, I have prepared for discussion at the end of our presentations, what I have called [draft] *CMI Guidelines for the Formulation of Marine Insurance Law - Chapter 1: Good faith, Disclosure, Alteration of Risk and Essential Terms*.

I have tried to prepare what I see as a wish list for marine insurance law in the light of the research to date. I do so as a hybrid common lawyer practising in the civilian traditions of South African Roman-Dutch law. But I fear already that I have not addressed the civilians properly: Dr Remé counsels on my draft:

I have the impression that civil law is hardly reflected in your (draft). This need not be a disadvantage since the biggest marine insurance markets in the world are dominated by common law. But there remain a few markets with a certain importance internationally which exist in countries of civil law.

Your challenge for reform is carried by the idea that the legislature will, upon advice received from the good marine insurance lawyers, act according to their proposals and will, therefore, produce good law.

John Hare, Report to the 38th Conference of the CMI Vancouver, 2004

Let me give you a different example: We have in Germany rules on the law of marine insurance in our commercial code which have been taken over with hardly any alteration from the old Commercial Code of 1861 when a new Commercial Code for Germany which had been unified in 1871 was prepared in 1896. All those rules have no binding effect, they may be abrogated by insurance conditions.

This has happened after World War I in 1919 with the general German rules on marine insurance (ADS). They have practically dominated the German marine insurance market until today. This was possible since when the insurance contracts act was created in 1908, it contained a rule exempting marine insurance from the application of that act. Recently our government has set up a reform commission for the insurance contracts act and that commission proposes to abolish the rule exempting marine insurance from the insurance contracts act. That act, as one would expect, is written in view of protecting the naive insured against the mighty insurer. Marine insurance, however, has for a long time been a field of merchants' law formed by the market, and our courts have watched against exaggerations on either side.

This experience has made me wonder whether legislators will listen to the advice of marine insurance lawyers and preserve a field of merchants' law instead of giving the insured priority over his marine underwriter. I wonder whether this warning, which I am sounding here would apply to a legislator in a common law country as well.

I fully appreciate that much of the content of the draft Guidelines is addressed at anomalies that are essentially common law problems. And it is probably not too simplistic to say that the civilian systems are not generally bedevilled by the same problems. I venture to suggest that this (and therefore their reason not to need at least parts of the draft guidelines) is that their marine insurance laws are further advanced and more in line with 21st century demands than those of the common law systems which cling so faithfully to the 1906 Act. And that evolution is no accident. They result from the remarkable marine insurance reform efforts of the Scandinavians and the Europeans over the past few decades.

Prof Wilhelmssen comments on my draft guidelines:

(The Guidelines) are a very good condensation of the issues and the problems they cause as practised in the common law countries. They are less well suited to address the marine insurance systems in civil law in general and in Scandinavia in (particular). From a Scandinavian perspective, guidelines concerning the duty of good faith and warranties or absolute conditions are not necessary as we do not use these concepts. Neither to we use the kind of sanctioning system that has caused so many problems in the common law. Your guidelines on materiality are already taken care of in our detailed regulation of duty of disclosure and alteration of risk. This might not be a problem as these guidelines are less needed in systems with a modern and balanced regulation, but I

think it should be emphasised that the guidelines mostly address common law problems.

I take Prof Wilhelmsen's comments as endorsement of my belief that it is the common law that needs the most attention. It is the common law that has diverged from the civilian roots from which all marine insurance law is derived. A cardinal question would be "Were the common law systems to embrace the principles of the draft guidelines as the broad structure of those aspects of their domestic marine insurance laws, would they then be in better harmony with the civilians?"

But in the real world, the question paramount will always be "What does each domestic jurisdiction and its markets want in its laws?" It may be that there are reasons, more than plain semantic or even jurisprudential idiosyncrasy, that pronounce *Vive la difference!* In whatever language. Maybe one of those reasons is perceived market advantage.

Our mission at the CMI is to recognise those individualist nationalistic forces, yet continue to strive for harmonisation and uniformity, wherever those ideals are practical. It is in that spirit that I look forward to an interesting debate to enable us to see if the goal of very broad guidelines is realistic. I would like to hear especially from the civilians. To prepare us further, we have Graydon Staring on warranties and essential terms, and our host rapporteur Mr George Strathy will then give us an outline of the Canadian perspective on marine insurance and its reform.

I should close by confirming that this session will bring to an end the current marine insurance review initiative of the CMI. We will continue to have a standing committee on marine insurance, and this will monitor marine insurance law and especially national reform initiatives, on an on-going basis. To that end, Graydon Staring will maintain a watching brief at the USA MLA discussions about a marine insurance act for the United States. Andrew Tulloch will continue to inform us about Australian and New Zealand reform. If any consensus emerges from our debate here in Vancouver, the ball will continue to be run by the standing committee.

I must in closing record the enormous input of members of the group. It has been difficult at times to keep enthusiasm going where there has been no firm destination to which to travel. Prof Trine-Lise Wilhelmsen should be singled out for her immense contribution, not only to the working of our group as rapporteur, but also to marine insurance law research generally. She has always been willing to share her research with us. Prof Malcolm Clarke took over the chair for a year, and has given our more impetuous members (including myself) wise counsel. Dr Thomas Remé started us off on a sound footing with his questionnaire. And Patrick Griggs has been an ever willing participant. Others outside the group have made useful contributions, notably Prof Sarah Derrington, and of course, our Canadian rapporteur for the day, George Strathy.

John Hare
Vancouver, June 2004

CMI GUIDELINES FOR THE FORMULATION OF MARINE INSURANCE LAW

[DRAFT FOR DISCUSSION]

Chapter 1

Good faith, Disclosure, Alteration of Risk & Essential Terms

1. Marine insurance contracts are contracts of good faith. Good faith requires each party to conduct itself with the other party in relation to all material aspects of their insurance contract according to objective norms recognized by the society in which they are being judged.
2. Acting in good faith requires each party before and at all times during the contract and in the submission of claims, to be honest in relation to all material matters, to disclose all – and not misrepresent any – material facts; and to disclose any material alteration of the risk during the currency of the policy.
3. Certain terms may be stated by the parties in the contract as requiring strict compliance; the contract may stipulate that in the absence of strict compliance by either party, the other party shall have the right to cancel the contract (or even that the contract shall terminate automatically), regardless of whether non-compliance caused the loss. Such should be the case in relation to safety at sea, classification, ownership, management and ISM Code compliance. The description “warranty” should not be used, and the English law warranty and its effects in law should be abolished.
4. Materiality in relation to an absence of good faith, a failure to disclose, a misrepresentation or a breach of a contractual term (not requiring strict compliance) is assessed according to a two-tier test of whether a reasonable insurer and a reasonable assured, both operating within the norms of the society and the context of the transaction in which such materiality is being adjudged, would consider the conduct to have affected the acceptance of the risk, the assessment of the premium and or the evaluation of claims by the insurer, and or the acceptance of cover by the insured.
5. Materiality requires a causative link between the breach and the loss or the claim.
6. Any material absence of good faith or material breach of the obligation to disclose or not to misrepresent or any material breach of an essential

term going to the root of the contract, gives the aggrieved party the right to treat the contract as at an end, effective from the date of the breach, with the right to claim damages. Material breach of a non-essential term not relating to good faith, disclosure or misrepresentation and not contractually stipulated as requiring strict compliance, suspends cover until the breach is remedied.

7. A non-material absence of good faith or breach of the obligation to disclose or not to misrepresent not founding a right to cancel the contract of insurance may nevertheless give rise to a claim for damages.

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PROPOSED REVISION OF THE CIVIL LIABILITY AND FUND CONVENTIONS

Chair: Colin de la Rue, London, UK

Deputy Chair: Jean-Serge Rohart, Paris, France

Rapporteur: John O'Connor, Quebec, QC, Canada

Guest Speaker: Måns Jacobsson, Director, IOPC Funds

Provisional Programme

There will be two main items on the Agenda for this Session. The first is to bring delegates up-to-date on developments in the review of the international compensation regime which is in progress at the International Oil Pollution Compensation Fund. The second is to review issues on which it is felt that the conventions have not always been applied in a uniform manner, and to discuss possible ways of promoting a more consistent approach.

The IOPC Fund Working Group concerned with this subject last debated it in February this year. An important further session is taking place in the week immediately prior to the Conference, when it may become clearer whether the conventions are to be revised. Mr Måns Jacobsson, the Director of the IOPC Funds, has kindly agreed to participate at the Conference and give a paper reporting on the latest news.

Regardless of whether the conventions are revised, a uniform application of the regime will continue to be vital. The issue is of particular importance in relation to the criteria to be applied in determining the admissibility of claims for pollution damage.

An important ruling on this subject is expected to be delivered shortly before the Conference in litigation in France arising from the Erika incident. Jean-Serge Rohart, the Deputy Chair and CMI President-elect, will give a paper on this subject. A discussion paper has also been prepared in which a summary is given of various issues on which it appears that the conventions have not been applied in a consistent manner. Delegates will be invited to comment on these issues and consider any ways in which the CMI and/or national associations could assist in promoting a more uniform approach.

The documents for the Conference which are posted on the CMI website include the above papers together with a selection of the most relevant documents published by the IOPC Fund. Further Fund documents (including notably those submitted for the May 2004 Working Group session) can be accessed on the IOPC Fund's website (www.iopcfund.org) by entering the document server and searching for the documents relating to 92FUND/WGR.3. *Colin de la Rue*

REVIEW OF THE INTERNATIONAL COMPENSATION REGIME UNIFORM APPLICATION OF THE CONVENTIONS DISCUSSION PAPER

CMI Working Group

Introduction

1. As explained in the Yearbook, it is not yet clear whether the current review of the international compensation regime by the IOPC Fund will result in a revision of the Conventions at this point in their history. A clearer picture may emerge from further debate at the Fund immediately prior to the CMI Conference, but it may also be some time before it is finally known whether, and if so to what extent, the regime is to be changed.

2. Irrespective of whether there is a revision, a uniform application of the Conventions will always be important to the effective operation of the regime. There are various provisions in the Conventions which appear to have been interpreted or applied in different ways in different contracting states. This is not seen as sufficient reason for revising the Conventions, for a revision would involve a degree of upheaval, at least for a transitional period, which is unlikely to be acceptable unless there is agreement on changes of more fundamental importance. However, if a revision does take place, the opportunity may then be taken to introduce suitable amendments to clarify a number of issues. Alternatively, if there is no revision, consideration may still be given to any other options for promoting a more uniform interpretation and application of the Conventions.

3. During the course of the Fund's review its Working Group has considered a Note by the Director in which he drew attention to a number of issues on which he felt that the Conventions had not always been applied in a uniform manner, or which had given rise to difficulties in the relationship between the Conventions and national law.¹ The Working Group has not taken a decision on any of these issues, but its consideration of the subject of uniformity led to a formal Resolution of the 1992 Fund, adopted in May 2003, emphasising the importance of a uniform approach.²

4. This aspect of the subject will therefore have a continuing importance, and given the purpose for which the CMI was founded it is the area in which there is the greatest potential scope for it to make a contribution. The Vancouver Conference is an ideal opportunity for these issues to be examined, and it is hoped that this paper will facilitate an active discussion.

¹ Note by the Director dated 9 January 2003 (92 FUND/WGR.3/14/3).

² Resolution No 8 of the 1992 Fund adopted by the Administrative Council acting on behalf of the 1992 Fund Assembly (92FUND/AC.1/A/ES.7/7).

5. The paper sets out the issues which have already been raised by the Director of the Fund and includes certain others of a similar type which have been identified by the CMI Working Group, particularly in relation to problems experienced under CLC. It is gratefully acknowledged that a number of the points addressed in this paper (as well as much of the accompanying text) are drawn directly from the Note by the Director referred to above, a copy of which is attached, together with a copy of the May 2003 Resolution.

6. The various issues are addressed below in the order of the relevant provisions in the Conventions. Other issues may possibly also be suggested. In the light of the differences of approach which have been noted, and of the Fund's Resolution, it may be appropriate to consider whether there are any measures which the CMI and/or national associations can take to support efforts to promote a uniform approach by national courts.

Issues

Definition of pollution damage

7. The question what claims are eligible for compensation within the meaning of the term "pollution damage" has always been the issue on which greatest room has existed for differences of opinion and for divergent application of the Conventions in contracting states. It is also the issue on which most work has been done to promote a consistent approach.

8. The 1992 Conventions contain the following definitions of the terms "pollution damage" and "preventive measures":

"Pollution damage" means:

(a) loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and includes the costs of preventive measures and further loss or damage caused by preventive measures, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken;

(b) the costs of preventive measures and further loss or damage caused by preventive measures.

"Preventive measures" means any reasonable measures taken by any person after an incident has occurred to prevent or minimize pollution damage.³

9. By the early 1990s there were growing concerns that these definitions did not establish sufficiently clear criteria to ensure consistent treatment of claims, particularly in relation to various issues affecting claims for economic loss. There were also concerns that the risk of different approaches could be

³ CLC 92 Art. I.6 and 7; Fund Convention 1992 Art. 1.2.

enlarged as a result of developments in the United States, and the attention drawn to the scope of claims allowable under OPA 90 and emergent State laws. In 1991 the CMI established an International Sub-Committee to report on these issues, investigate relevant domestic laws through national associations, and analyse the replies in a discussion paper for consideration at the CMI Conference in Sydney in October 1994. This work led to the adoption at that Conference of the CMI Guidelines on Oil Pollution Damage.

10. In the meantime, prompted by a multiplicity of claims raising important issues in the *Haven*, *Aegean Sea* and *Braer* incidents, the 1971 Fund Assembly decided, in October 1993, to establish its Seventh Intersessional Working Group with a mandate to examine the criteria for the admissibility of claims for pollution damage under the international regime. After a thorough review of the subject, the Working Group produced a detailed report which was endorsed by the Assembly at its Seventeenth Session in October 1994, just two weeks after the CMI Conference in Sydney.

11. During the course of these parallel projects considerable dialogue took place between representatives of the two organisations, and the conclusions reached in each case were substantially identical.

12. The CMI Guidelines have sometimes been referred to in connection with oil spills in non- Convention states, but in retrospect possibly their greater significance lay in the research behind them and in any contribution this may have made to the similar work undertaken by the Fund. The Fund's criteria, of course, carry the weight of inter-governmental support, and over the last decade they have increased in importance with further growth in the number of contracting states. They have been applied and refined by the governing bodies of the Funds in dealing with thousands of claims, so that nowadays a substantial body of precedent is available. This naturally promotes a treatment of claims which is not only consistent but may also be considered the most fair and appropriate in the light of experience.

13. As this body of precedent and practice has grown, so also the case has strengthened for saying that it should be taken into account by courts of law. However this is an issue on which different views have been expressed. On one view, the Fund's criteria merely represent the opinion of one of the parties to the litigation, and it would be wrong for a neutral court to accord it any greater significance than the opinion of the claimant. At the other end of the spectrum, it has sometimes been argued that the decisions of the Funds' governing bodies represent a practice of states which courts should take into account, in interpreting the oil pollution conventions, in accordance with the Vienna Convention on the Law of Treaties.

14. A possible middle view is that courts should at least be aware of the practical reasons why a uniform approach is of particular importance in this field, and appreciate the relatively great extent of the Fund's experience in evaluating oil pollution claims. On this basis it may be suggested that the Fund's criteria, without being legally binding on the court, do merit being accorded a degree of persuasive authority.

15. Currently this issue is particularly topical, for immediately prior to the Vancouver Conference a decision on it is expected from the Court of Appeal in Rennes in litigation arising from the *Erika* incident. It may be of interest to compare the decision with the approaches so far taken to the same issue in other jurisdictions, for example in the *Braer* and *Sea Empress* cases (Scotland and England).

Channelling of liability

16. CLC imposes liability for pollution damage solely on the registered owner of the ship and on the guarantor named in the ship's CLC certificate. It excludes liability on the part of various other parties who may be connected in some way with the vessel. These exclusions – the so-called “channelling” provisions – are set out in Art. III.4 of CLC and were extended considerably in CLC 92. They are set out below in the original and revised versions:

CLC 1969 Art III.4

No claim for compensation for pollution damage shall be made against the owner otherwise than in accordance with this Convention. No claim for pollution damage under this Convention or otherwise may be made against the servants or agents of the owner.

CLC 1992 Art III.4

No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures;
- (f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

17. These provisions are without prejudice to any rights of recourse which may be available to the owner, and which may lie against any of the above parties, but any such rights would not affect the owner's primary liability to claimants for pollution damage. The effect of these provisions is among other things as follows:

- More efficient use is made of market insurance capacity, thereby facilitating higher limits of the shipowner's liability;

- The handling of claims is streamlined, and not encumbered by time-consuming and expensive fault-related litigation against multiple defendants;
- A situation is avoided where the owner's right of limitation is rendered worthless because supplemental liability is incurred by another party whom he may be bound to indemnify, *e.g.* the master.

18. During the course of the review by the Fund Working Group it has been proposed by some participants that the channelling provisions to be revised, notably to make it easier to sue the charterer of the ship. These proposals have been discussed, but no firm conclusions on them have been reached, pending a decision whether the conventions are to be revised for other more fundamental reasons.⁴

19. Leaving aside any changes that may be proposed on policy grounds, two particular points have been identified on which the channelling provisions appear not to have been uniformly applied, or may not be consistently applied in future.

Claims filed in criminal proceedings

20. As pointed out by the Fund Director, despite the channelling provisions there has been experience of national courts holding the master personally liable for pollution damage.⁵ This result has apparently been reached as a result of compensation claims being filed in criminal proceedings, and because criminal liability gave rise to automatic civil liability for the same event. In incidents where the IOPC Funds have been involved such cases appear to have been limited so far to cases governed by CLC 69 and the Fund Convention 1971, but it seems likely that the same problem could also arise under CLC 92.

Cargo owners

21. The list of parties whose liability is excluded by CLC does not include the owners of the oil cargo involved. Normally this has not been significant because in most traditional jurisprudence there would in any event not be any grounds for holding the cargo owner liable for pollution caused by a spill. However in some jurisdictions legislation has been introduced to include the owners of a pollutant among those strictly liable for any damage it causes. There are also moves in some jurisdictions to develop notions of liability for negligent choice of carrier. Laws of this kind takes different forms, and are not necessarily directed specifically at oil pollution from ships, but could include such pollution within the wider ambit of laws designed, for example, to govern liability for disposal of waste. This has not yet led to any known

⁴ See further the Report of the Third Session of the Working Group, 92 FUND/A/ES.7/6, paras. 6.28-6.38.

⁵ 92 FUND/WGR.3/14/3, para. 2.2.

problem in contracting states, but the potential for such problems appears to be growing.

22. In the event of cargo owners being held liable for an oil spill covered by the international regime, there is a strong probability that they will also be contributors to the Fund and therefore financially affected by the incident in two different capacities. This would be inequitable if it were to occur in some member states but not in others.

Limitation of liability – establishment of fund

23. As is well known, different states have different practices and procedures for establishing security and/or limitation funds in respect of maritime claims. This is reflected in CLC which provides that a limitation fund under the Convention ... can be constituted either by depositing the sum or by producing a bank guarantee or other guarantee, acceptable under the legislation of the Contracting State where the fund is constituted, and considered to be adequate by the Court or another other competent authority.⁶

24. Whilst this reflects the different practices which exist, the required procedure often confers no practical benefits on claimants under CLC, and sometimes it may even be considered unhelpful to the smooth functioning of the compensation system.

25. Cases under CLC differ from other maritime limitation cases in a number of important respects. First, whilst other limitation proceedings have frequently concerned only a small number of commercial parties (such as the owners of another ship and its cargo), in CLC cases there are typically multiple claimants, and commonly the majority are private individuals or small businesses. In such cases there are relatively strong reasons for interim payments to be made long before it is possible for a court to order final distribution of a limitation fund. However it is clearly more difficult or burdensome for the ship's insurer to make or participate in interim payments if the incident occurs in a jurisdiction where a CLC fund can be established only by a cash deposit.

26. Second, unlike most other liabilities in maritime law, those under CLC give rise to direct rights of action against the insurer, subject to the sole defence of wilful misconduct. The claimants' rights to payment from a limitation fund are accordingly guaranteed from the outset by virtue of the Convention itself and the CLC certificate naming the insurer as guarantor. It is therefore strongly open to question what practical benefit is gained by requiring the insurer to issue a further guarantee, to confirm the guarantee already given, particularly when the text of such further guarantee is not prescribed by the Convention and may give rise to debate and delay.

27. Third, from the outset the insurer has been approved as guarantor by the

⁶ Art. V.3.

competent authority. In other maritime cases it is a matter for negotiation, or decision by the court, whether an insurer's letter of undertaking is sufficient or whether a bank guarantee is required. Bank guarantees cost commission which can amount to a considerable sum over the lengthy period for which CLC cases often continue. Consequently, even if a fresh guarantee post-incident is required, it is open to question what justification exists for requiring the additional cost to be incurred of a guarantee furnished by a bank, or indeed by any party other than the approved insurer.

Release of ship from arrest

28. If a ship or other property of the shipowner are arrested as security for claims, CLC provides for its release where the owner has constituted a fund and is entitled to limit his liability. This is set out in Art. VI.1, which provides as follows:

Where the owner, after an incident, has constituted a fund in accordance with Article V. and is entitled to limit his liability,

(a) no person having a claim for pollution damage arising out of that incident shall be entitled to exercise any right against any other assets of the owner in respect of such claim;

(b) the Court or other competent authority of any Contracting State shall order the release of any ship or other property belonging to the owner which has been arrested in respect of a claim for pollution damage arising out of that incident, and shall similarly release any bail or other security furnished to avoid such arrest.

29. An issue has sometimes arisen in connection with the requirement that the owner "is entitled to limit his liability." The problem with it is that it is open to the interpretation that the ship or other assets can be released only after a limitation decree has been ordered, or, at least, after a provisional examination has been made of the prospects of limitation being barred. This inevitably involves time-consuming investigations and has, in some cases, been a factor in ships being detained for very long periods.

30. It seems likely that the law and practice in some jurisdictions may reflect the precedent of cases under the 1957 Brussels Limitation Convention, where the test for breaking limitation (as under CLC 69) was "actual fault or privity", with the onus of proof on the owner.

31. In modern cases of oil pollution the position normally differs in important respects. CLC 92 adopts the much more restrictive test of the 1976 London Limitation Convention and also reverses the burden of proof. Moreover, in the great majority of CLC states the Fund Convention 1992 is also applicable, with the result that the adequacy of available compensation is normally obvious in all but very rare cases. This means that there is normally no practical benefit to claimants in requiring the shipowner to provide them with security for claims in excess of the CLC limit.

Direct action against insurer

32. Where an insurer provides a “Blue Card”, and consents to being named in the ship’s CLC certificate, it thereby undertakes direct liability for claims under the Convention. CLC Art. VII.8 provides that -

Any claim for compensation for pollution damage may be brought directly against the insurer or other person providing financial security for the owner’s liability for pollution damage. In such case the defendant may, irrespective of the actual fault or privity of the owner, even if the owner is not entitled to limit his liability according to Article V, paragraph 2, avail himself of the limits of liability prescribed in Article V, paragraph 1. He may further avail himself of the defences (other than the bankruptcy or winding up of the owner) which the owner himself would have been entitled to invoke. Furthermore, the defendant may avail himself of the defence that the pollution damage resulted from the wilful misconduct of the owner himself, but the defendant shall not avail himself of any other defence which he might have been entitled to invoke in proceedings brought by the owner against him. The defendant shall in any event have the right to require the owner to be joined in the proceedings.

33. The Convention therefore makes it clear that the insurer cannot invoke any policy defences (including a “pay to be paid” provision) and that it is exonerated only in the event of wilful misconduct by the owner. In exchange for this exposure the same provision makes it clear that the insurer’s liability for pollution damage is always capped by the ship’s liability limit, even if the shipowner’s right of limitation is broken.

34. In some cases where the shipowner’s right of limitation has been challenged, attempts have been made to bring claims directly against the insurer, for amounts above the CLC limit, in reliance on other domestic legislation. There are concerns that such claims are not consistent with CLC and, if allowed in some jurisdictions, result in different applications of the Convention in different contracting states.

Time bar

35. The relevant provisions in the Conventions on time bar read as follows:

Civil liability conventions art. VIII:

Rights of compensation under this Convention shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage. Where this incident consists of a series of occurrences, the six years’ period shall run from the date of the first occurrence.

Fund conventions art.6:

1. Rights to compensation under Article 4 or indemnification under Article 5 shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within

three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.

2. Notwithstanding paragraph 1, the right of the owner or his guarantor to seek indemnification from the Fund pursuant to Article 5, paragraph 1, shall in no case be extinguished before the expiry of a period of six months as from the date on which the owner or his guarantor acquired knowledge of the bringing of an action against him under the Liability Convention.⁷

36. As noted by the Director, some Fund member states have not implemented in their national laws the exact text of the above provisions. In some instances this has changed their substantive effect. There has also been experience of national courts interpreting these provisions in conjunction with other domestic laws concerning time bars. This has been the case particularly in jurisdictions where claims for compensation may be made in criminal as well as civil proceedings.⁸

37. Another issue which has arisen is whether a court in which a CLC limitation fund is established has power to accelerate the distribution of the fund by imposing a shorter time-limit for the presentation of claims against that fund. Issues have arisen as to whether national laws imposing such time limits in limitation proceedings are in conflict with Art. VIII of CLC.

38. Different views have been expressed as to whether the time limit provisions are absolute, or whether there are any circumstances in which the period can be suspended or extended. The against the Fund of three years from the date of the damage can be extended by notifying it of proceedings against the owner,⁹ but an issue has sometimes arisen as to whether this is sufficient also to avoid a claim being affected by the further time-bar which applies six-years after the date of the incident.

Jurisdiction

39. The Conventions provide that each Contracting State shall ensure that its courts possess the necessary jurisdiction to entertain actions for compensation.¹⁰ However they do not require States to designate any particular court with exclusive competence to deal with claims arising from the same incident. In some cases this has resulted in claims being submitted to a number of different courts, particularly in cases where the same incident

⁷ The words in italics do not appear in the Fund Convention 1992.

⁸ See further 92 FUND/WGR.3/14/3, para. 3.2.

⁹ See further 92 FUND/WGR.3/14/3, para. 3.3. Art. 7.4 of the Fund Conventions sets out the Fund's right to intervene in proceedings against the owner, and Art. 7.6 provides that where notice of such proceedings has been given to the Fund in accordance with the applicable formalities, the Fund is bound by the facts and findings made in the court's judgment, irrespective of whether it has exercised its right of intervention.

¹⁰ Civil Liability Conventions Art. IX.2; Fund Conventions Art. 7.2.

has affected a long stretch of coast extending to different political or administrative sub-divisions of the same state. Apart from inconsistent approaches to similar claims, significant complications may be experienced in connection with limitation proceedings, especially if each court is considered competent to determine whether or not the owner is entitled to limit liability.

40. Similar problems have also been experienced in states which allow compensation claims to be filed in criminal proceedings arising from the incident (*e.g.* against the Master), as well as in separate civil proceedings. As already mentioned, this has sometimes resulted in liability for compensation being incurred by parties whose liability should be excluded by the channelling provisions.¹¹ Another problem to which it has led is a duplication of substantially the same claim in both criminal and civil proceedings. This has caused particular difficulty in relation to claims made on behalf of the State, especially when a different ministry or other agency of State bears responsibility for maintaining the claim in the two different types of proceedings. In this situation there has been experience of prolonged difficulties in resolving an apparent duplication, such as to bring pro-rating into play and reduce the amount of interim compensation which could be paid in the meantime.

Enforcement of judgments against the 1992 Fund

41. The Fund Conventions contain provisions designed to ensure that the enforcement of claims against the Funds is subject to any decision of the competent Fund body relating to the distribution of compensation in cases where the admissible claims exceed the limit of compensation. However it appears that these provisions have not always been reflected in national laws, and there are concerns that this could result in claims approved by courts shortly after an incident being enforced in full, to the detriment of parties whose claims are approved only later.¹²

Measures to promote uniformity

42. If governments decide that the international regime is to undergo a full-scale revision, there will no doubt be an opportunity for amendments designed to clarify issues such as those highlighted above. However, amendments of this kind will not necessarily be sufficient to ensure uniformity in all cases, and other options may also need to be considered, particularly if no revision takes place.

¹¹ See para. 20 above.

¹² See further the observations of the Fund Director as set out at para 4 of 92 FUND/WGR.3/14/3.

¹³ 92FUND/WGR.3/14/3, para 8.

43. particular focal points are of course the implementation of the conventions in national laws, and their application to specific cases by courts of law. At each point, issues may arise as to the relationship between the conventions and other national laws.

44. The Fund Working Group has discussed possible options including steps to increase awareness of factors which national authorities should be urged to take into consideration. These are reviewed in the Note by the Director referred to above.¹³ It may be useful to discuss whether there are any ways in which the CMI or national associations could assist in raising awareness of these matters or in pursuing any similar options.

THE INTERNATIONAL REGIME ON LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE REVISITED

MÅNS JACOBSSON*

The present regime

The International Oil Pollution Compensation Fund 1971 (1971 Fund) was established in October 1978. It operates within the framework of two international Conventions: the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 Civil Liability Convention) and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund Convention).

This 'old' regime was amended in 1992 by two Protocols. The amended Conventions, known as the 1992 Civil Liability Convention and the 1992 Fund Convention, entered into force on 30 May 1996. The International Oil Pollution Compensation Fund 1992 (1992 Fund) was set up under the 1992 Fund Convention.

The Civil Liability Conventions govern the liability of shipowners for oil pollution damage. The Conventions lay down the principle of strict liability for shipowners and creates a system of compulsory liability insurance. The shipowner is normally entitled to limit his liability to an amount which is linked to the tonnage of his ship.

The 1992 Fund Convention, which is supplementary to the 1992 Civil Liability Convention, establishes a regime for compensating victims when the compensation under the applicable Civil Liability Convention is inadequate.

Each of the Fund Conventions established an intergovernmental organisation to administer the compensation regime created by the respective Fund Convention, the International Oil Pollution Compensation Funds 1971 and 1992 (IOPC Funds). The Organisations have their headquarters in London.

The 1971 Fund Convention ceased to be in force on 24 May 2002 and does not apply to incidents occurring after that date. However, before the 1971 Fund can be wound up, all pending claims arising from incidents which occurred before that date in 1971 Fund Member States will have to be settled and paid and any remaining assets distributed among contributors.

As at 10 May 2004, 95 States were Parties to the 1992 Civil Liability Convention, and 86 States were Parties to the 1992 Fund Convention. The States Parties to the 1969 and 1992 Conventions are listed in the Annex.

* Director, International Oil Pollution Compensation Funds

The[G1] 1969 Civil Liability Convention remains in force in respect of 44 [A2]States. Although it was envisaged that States becoming Parties to the 1992 Civil Liability Convention would denounce the 1969 Convention, some States are still Parties to both, resulting in complex treaty relationships.

Information on the international compensation regime and the IOPC Funds is available on the Funds' web site at: <http://www.iopcfund.org>

The legal framework

Scope of application

The 1969 Civil Liability Convention and 1971 Fund Convention apply to pollution damage suffered in the territory (including the territorial sea) of a State Party to the respective Convention by spills of persistent oil from oil tankers. Under the 1992 Civil Liability and Fund Conventions, however, the geographical scope is wider, with the cover extended to pollution damage caused in the exclusive economic zone (EEZ) or equivalent area of a State Party.

'Pollution damage' is defined in the original Conventions as loss or damage caused by contamination. The definition of 'pollution damage' in the 1992 Conventions has the same basic wording as the definition in the original Conventions, but with the addition of a phrase to clarify that, for environmental damage (other than loss of profit from impairment of the environment), compensation is limited to costs incurred for reasonable measures actually undertaken or to be undertaken to reinstate the contaminated environment. 'Pollution damage' includes the costs of reasonable preventive measures, ie measures to prevent or minimise pollution damage.

The 1969 and 1971 Conventions apply only to damage caused or measures taken after oil has escaped or been discharged. These Conventions do not apply to pure threat removal measures, ie preventive measures which are so successful that there is no actual spill of oil from the tanker involved. Under the 1992 Conventions, however, expenses incurred for preventive measures are recoverable even when no spill of oil occurs, provided that there was a grave and imminent threat of pollution damage.

The 1969 and 1971 Conventions apply only to ships which actually carry oil in bulk as cargo, ie generally laden tankers. Spills from tankers during ballast voyages are therefore not covered by these Conventions. The 1992 Conventions, however, apply also to spills of bunker oil from unladen tankers provided they have onboard residues of a persistent oil cargo. Neither the 1969/1971 Conventions nor the 1992 Conventions apply to spills of bunker oil from ships other than tankers.

Shipowner's liability

Under the Civil Liability Conventions, the shipowner has strict liability for pollution damage caused by the escape or discharge of persistent oil from his ship. This means that he is liable even in the absence of fault on his part. He is exempt from liability only if he proves that:

Pollution of the Marine Environment

- the damage resulted from an act of war, hostilities, civil war, insurrection or a grave natural disaster, or
- the damage was wholly caused by an intentional act or omission with the intent to cause damage by a third party, or
- the damage was wholly caused by the negligence of public authorities in maintaining lights or other navigational aids.

The shipowner is normally entitled to limit his liability to an amount determined by the size of the ship. Under [I&HR3] the 1969 Civil Liability Convention, the shipowner's liability is limited to 133 Special Drawing Rights (SDR) (£108 or US\$194) per ton of the ship's tonnage or 14 million SDR (£11.4 million or US\$20 million), whichever is less¹.

The original limits under the 1992 Civil Liability Convention, which were considerably higher than under the 1969 Convention, [G4] were increased by 50.73% by the Legal Committee of the International Maritime Organization (IMO), using a special procedure laid down in the Convention (the 'tacit amendment procedure'), for incidents occurring on or after 1 November 2003.

Ship's tonnage	Incidents occurring before or on 31 October 2003	Incidents occurring on or after 1 November 2003
Ship not exceeding 5000 units of gross tonnage	3 000 000 SDR (£2.4 million or US\$4.4 million)	4 510 000 SDR (£3.7 million or US\$6.6 million)
Ship between 5 000 and 140 000 units of gross tonnage	3 000 000 SDR (£2.4 million or US\$4.4 million) plus 420 SDR (£342 or US\$612) for each additional unit of tonnage	4 510 000 SDR (£3.7 million or US\$6.6 million) plus 631 SDR (£514 or US\$920) for each additional unit of tonnage
Ship of 140 000 units of gross tonnage or over	59 700 000 SDR (£49 million or US\$87 million)	89 770 000 SDR (£73 million or US\$131 million)

Under [A5] the 1969 Civil Liability Convention, the shipowner is deprived of the right to limit his liability if the incident occurred as a result of the owner's personal fault (actual fault or privity). Under the 1992 Convention, however, the shipowner is deprived of this right only if it is proved that the pollution damage resulted from the shipowner's personal act

¹ The unit account in the Conventions is the Special Drawing Right (SDR) as defined by the International Monetary Fund. In this paper, the SDR has been converted into Euros at the rate of exchange applicable on 10 May 2004, ie 1 SDR = US\$1.43986.

or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Compulsory insurance

The shipowner is obliged to maintain insurance to cover his liability under the applicable Civil Liability Convention. This obligation does not apply to ships carrying less than 2 000 tonnes of oil as cargo.

Channelling of liability

Claims for pollution damage under the Civil Liability Conventions can be made only against the registered owner of the ship concerned. This does not preclude victims from claiming compensation outside the Conventions from persons other than the shipowner. However, the 1969 Civil Liability Convention prohibits claims against the servants or agents of the shipowner (eg the master and the crew). The 1992 Civil Liability Convention prohibits not only claims against the servants or agents of the shipowner, but also claims against the pilot, the charterer (including a bareboat charterer), manager or operator of the ship, or any person carrying out salvage operations or taking preventive measures. This prohibition[G6] does not apply if the pollution damage resulted from the personal act or omission of the person concerned, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

The IOPC Funds' obligations

The IOPC Funds pay compensation when those suffering oil pollution damage do not obtain full compensation under the applicable Civil Liability Convention in the following cases:

- the damage exceeds the limit of the shipowner's liability under the applicable Civil Liability Convention
- the shipowner is financially incapable of meeting his obligations under the applicable Civil Liability Convention in full, and the insurance is insufficient to satisfy the claims for compensation
- the shipowner is exempt from liability under the applicable Civil Liability Convention because the damage was caused by a grave natural disaster, or wholly caused by an intentional act or omission with the intent to cause damage by a third party or the negligence of public authorities in maintaining lights or other navigational aids.

The compensation payable by the 1971 Fund in respect of an incident is limited to an aggregate amount of 60 million SDR (£50 million or US\$89 million). For [G7]incidents occurring before 1 November 2003 the maximum amount payable by the 1992 Fund in respect of an incident is 135[A8] million SDR (£110 million or US\$200 million). This[G9] maximum amount was increased, [G10]using the 'tacit amendment procedure', to 203 million SDR (£165 million or US\$300 million) for incidents occurring on or after that date. These maximum amounts include the sum actually paid by the shipowner (or his insurer) under the applicable Civil Liability Convention. [A11]

Under the 1971 Fund Convention the 1971 Fund indemnifies, under certain conditions, the shipowner for part of his liability under the 1969 Civil Liability Convention. There are no corresponding provisions in the 1992 Fund Convention.

Time bar

Claims for compensation under the Civil Liability and Fund Conventions are time-barred (extinguished) unless legal action is brought against the shipowner and his insurer and against the 1971 or 1992 Fund within three years of the date when the damage occurred and in any event within six years of the date of the incident.

Jurisdiction and enforcement of judgements

The Courts in a State or States where the pollution damage occurs have exclusive jurisdiction over actions for compensation under the Conventions against the shipowner, his insurer and the IOPC Funds. A judgement by a Court competent under the applicable Convention, which is enforceable in the State of origin and which is no longer subject to ordinary forms of review in that State, shall be recognised and enforceable in the other Contracting States.

Contributions

The IOPC Funds are financed by contributions paid by any person who has received in the relevant calendar year in excess of 150 000 tonnes of crude oil or heavy fuel oil (contributing oil) in ports or terminal installations in a State which is a Member of the relevant Fund, after carriage by sea. The levy of contributions is based on reports on oil receipts in respect of individual contributors which are submitted to the Secretariat by the Governments of Member States. Contributions are paid by the individual contributors directly to the IOPC Funds. Governments are not responsible for these payments, unless they have voluntarily accepted such responsibility.

Uniform applications of the Conventions

The 1971 and 1992 Fund Assemblies have expressed the opinion that a uniform interpretation of the definition of ‘pollution damage’ is essential for the functioning of the regime of compensation established by the Conventions. The IOPC Funds’ position in this regard applies not only to questions of principle relating to the admissibility of claims but also to the assessment of the actual loss or damage where the claims do not give rise to any question of principle.

The importance of uniformity of application is obvious. It is important from the point of view of equity that claimants are treated in the same manner independent of the State where the damage was sustained. In addition, the oil industry in one Member State pays for the cost of clean-up operations incurred and economic losses suffered in other Member States. Unless a reasonably high degree of uniformity and consistency is achieved, there is a

risk of great tensions arising between Member States and of the international compensation systems no longer being able to function properly.

It should be noted that the definition of 'pollution damage' is the same in the 1992 Civil Liability Convention and the 1992 Fund Convention. For this reason, the concept of 'pollution damage' should be interpreted in the same way independent of whether the claim is against the shipowner/his insurer under the 1992 Civil Liability Convention or against the shipowner/his insurer and the 1992 Fund under both 1992 Conventions. Similarly, the concept should also be interpreted in the same way by the national courts whether the claim under consideration is under only the 1992 Civil Liability Convention or under both 1992 Conventions.

The 1992 Fund considers each claim on the basis of its own merits, in the light of the particular circumstances of the case. Whilst criteria for the admissibility of claims have been adopted, a certain flexibility is nevertheless allowed, enabling the Fund to take into account new situations and new types of claims. Generally, the Fund follows a pragmatic approach, so as to facilitate out-of-court settlements.

Decisions on the admissibility of claims which are of general interest are reported in the IOPC Funds' Annual Report.

The 1992 Fund has published a Claims Manual which contains general information on how claims should be presented and sets out the general criteria for the admissibility of various types of claims.

Review of the adequacy of the international compensation regime

1992 Fund Working Group

In April 2000, the 1992 Fund Assembly established a Working Group to examine the adequacy of the international compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention. The point was made that although the system had worked well on many occasions, there were inadequacies in the system.

The Working Group has held six meetings, the most recent from 23 to 27 February 2004. The next meeting will take place from 24 to 28 May 2004².

Supplementary Fund

During the discussions in the Working Group a number of Member States maintained that in order for the international compensation system to retain credibility, the maximum compensation levels should be sufficiently high to ensure full compensation to victims even in the most serious oil spill incidents. Other Member States, however, did not see the need to increase the maximum level of compensation over and above the increases adopted within the IMO in October 2000 referred to above which brought the total amount available from 1 November 2003 to 203 million SDR (US\$299 million). In

² The reports of the Working Group to the Assembly are available on the IOPC Funds' website.

the light of the difference in views, the Working Group decided to work towards the creation of an optional third tier of compensation.

A Diplomatic Conference was held under the auspices of IMO in London from 12 to 16 May 2003 to consider the creation of a Supplementary Compensation Fund. After difficult negotiations, a Protocol was adopted creating such a Supplementary Fund. The main elements of the Protocol are as follows:

- The total amount of compensation available for pollution damage in the States that become Parties to the Protocol will be 750 million SDR (US\$1 100 million), including the 203 million SDR (US\$300 million) available under the 1992 Conventions.
- The Supplementary Fund will be financed by contributions payable by oil receivers in the States which ratify the Protocol.
- The Protocol contains a provision for so-called “capping” of contributions, ie that the aggregate amount of contributions payable in respect of contributing oil received in a particular State during a calendar year should not exceed 20% of the amount of contributions levied. The capping provision applies until the total amount of contributing oil received in the States Members of the Supplementary Fund has reached 1 000 million tonnes or for a period of 10 years from the date of the entry into force of the Protocol, whichever is the earlier.
- For the purposes of contributions, it will be considered that there is a minimum aggregate quantity of 1 million tonnes of contributing oil received in each Member State of the Supplementary Fund.
- The Protocol will enter into force three months after it has been ratified by at least eight States which have received a combined total of 450 million tonnes of contributing oil in a calendar year.
- The Protocol only applies to incidents which occur after its entry into force.

Only Denmark and Norway have ratified the Protocol so far, but it is likely that a number of other States will ratify it by late summer 2004. It is expected, therefore, that the Protocol will enter into force towards the end of 2004.

Sharing of burden between shipowners and the oil industry

When the Working Group discussed whether amendments should be made to the provisions in the 1992 Civil Liability Convention regarding shipowners’ liability and related issues, it became clear that there was a great divergence of opinion.

Representatives of shipowners and their insurers took the view that the issues relating to shipowners’ liability should not be reopened since to do so would be detrimental to the position of victims of oil pollution. It was suggested that the 1992 Conventions were intended to create an efficient compensation regime and had not been intended to ensure the quality of shipping or to punish the guilty party. It was further suggested that any amendments to the provisions relating to shipowners’ liability would give rise

to serious treaty law problems. It was emphasised that it was of paramount importance to maintain the equitable balance between the burdens imposed on the two industries involved, ie those of the shipping and cargo interests. In the view of the shipowners and insurers, an analysis of oil spills which had occurred in the period 1990-1999 showed that the present regime had resulted in an equitable sharing of burden between these two interests. The International Group of P & I Clubs informed the 1992 Fund that the P & I Clubs, with the support of shipowners, were developing a proposal for a voluntary increase in the limit of liability for small ships under the 1992 Civil Liability Convention which would apply only in the States which ratified the proposed Supplementary Fund Protocol. Although the precise level of the increase has not yet been decided, it is expected that the limit for small ships will be increased from 4.5 million SDR (US\$6.6 million) to about of 20 million SDR (US\$29 million). The International Group maintained that such a voluntary increase would preserve this balance and that the matter should be reexamined in the light of experience three to five years after the entry into force of the proposed Protocol establishing a Supplementary Fund.

Representatives of the oil industry maintained that the international compensation regime should ensure that persons suffering oil pollution damage were compensated promptly but also be consistent with the general objective to improve maritime safety and reduce the number of oil spills. It was emphasised that it was the sole responsibility of the shipowner to maintain a safe and seaworthy ship. It was suggested that the latter objective might be compromised by the establishment of the Supplementary Fund, in so far as it was funded only by oil receivers. In addition, the point was made that a Supplementary Fund financed permanently by oil receivers would only distort the balance between the shipowners' and oil receivers' contributions to the regime. It was the oil industry's view that such a Supplementary Fund would also shield low quality shipowners from the consequences of their actions and would therefore not provide any incentive to improve the quality of their ships or the standards of their operations.

A number of Fund Member States, whilst recognising the short-term benefits of the Protocol establishing a Supplementary Fund and the proposed voluntary increase of the limitation amount for small ships, considered that it was still necessary to take a long and hard look at the current regime and to increase the shipowners' involvement on a firm legal basis.

Several Member States expressed the view that increasing the financial burden on shipowners beyond those already envisaged by the 50% increase that would come into effect in November 2003 and the proposed voluntary increase for small ships was not justified. Those States also stated that tonnage-related financial limits were well established in maritime law and stressed the importance of the Civil Liability Convention remaining consistent with other international maritime compensation Conventions.

In February 2003 the Working Group decided that, in view of the apparent disagreement between the shipping industry and the oil industry on the extent to which the financial burden of oil spills had been shared in the past and would be shared in the future, the Director should undertake an

independent study of the costs of past spills in relation to the current and future limitation amounts of the 1992 Conventions. The Working Group considered that it was important that the study reflected the costs of past spills and the apportionment of those costs between the shipping and oil industries on the basis of values in 2003 and the likely values in the future, taking into account inflation indices for individual States. This study will be published in mid-May 2004.

At the Working Group's meeting in February 2004, several options were put forward relating to the equitable sharing of the financial burden resulting from oil spills between shipowners and the oil industry. These options could be summarized as follows.

Under one option, there should be a higher minimum liability limit for small ships up to a given tonnage, and for larger ships the additional amount per gross tonne would be increased in such a way that the maximum amount under the present 1992 Civil Liability Convention would apply to ships with a lower tonnage than at present.

Another option presented was that the shipowner should be liable up to a certain amount, independent of the tonnage of the ship. The liability would thereafter be split between the shipowner and the Fund on a percentage basis up to the maximum amount payable under the 1992 Fund Convention. The Supplementary Fund financed by oil receivers would then pay compensation over that amount.

A third option envisaged that a third layer of compensation should be introduced in the form of liability on the cargo owner.

A further option proposed by the oil industry representatives was to increase the shipowner's liability to a flat amount of 90 million SDR for all ships, and a sharing of the contributions to the Supplementary Fund between the oil receivers and the shipowners. Alternatively, the oil industry representatives proposed a significantly higher limit of the shipowner's liability, independent of the ship's tonnage, together with a corresponding increase in the maximum amount payable by the 1992 Fund.

The various options will be examined further at the Working Group's next meeting³.

It should be noted that, so far, no decision has been taken that the 1992 Conventions should be amended.

Shipowner's right to limit his liability and channelling of liability

The Working Group also considered a proposal to develop new criteria governing the shipowner's right to limitation of liability so as to make it easier to break that right. The view was expressed that the virtually unbreakable right of limitation of shipowners under the 1992 Civil Liability Convention had hampered the 1992 Fund from taking recourse actions against owners of

³ A number of documents which will be examined at that meeting are available on the Funds' website.

sub-standard ships. A number of States expressed the view, however, that it was inappropriate to lower the threshold for breaking the shipowner's right to limit liability as means of trying to improve the overall quality of shipping, and that in those States' view this objective was best dealt with through other international Conventions, which attached punitive sanctions to non compliance.

Furthermore, the Working Group considered a proposal that the present provisions on channelling of liability, which precluded claims for compensation being pursued against a number of parties (eg the charterer) should be amended so as to revert to the channelling provisions in the 1969 Civil Liability Convention, which barred only claims against the servants or agents of the shipowner. A number of delegations considered that the benefit to victims afforded by the current channelling provisions was of paramount importance, but supported exploring further a proposal put forward at a previous meeting of the Working Group to include charterers' (usually cargo owners) liability in the compensation regime.

These issues will also be considered further by the Working Group at its next meeting.

Other issues

The Working Group is also considering other issues such as the refinement of the contribution system, problems caused by States not submitting oil reports, the definition of 'ship', uniform application of the 1992 Conventions, alternative dispute settlement procedures (ADR) and admissibility of claims for fixed costs. The discussions on these issues continue.

* * *

Annex

**States Parties to both the
1992 Protocol to the Civil Liability Convention and the
1992 Protocol to the Fund Convention
as at 10 May 2004**

*85 States for which Fund Protocol is in force
(and therefore Members of the 1992 Fund)*

Algeria	France	Panama
Angola	Gabon	Papua New Guinea
Antigua and Barbuda	Georgia	Philippines
Argentina	Germany	Poland
Australia	Ghana	Portugal
Bahamas	Greece	Qatar
Bahrain	Grenada	Republic of Korea
Barbados	Guinea	Russian Federation
Belgium	Iceland	Saint Vincent and the Grenadines
Belize	India	Samoa
Brunei	Ireland	Seychelles
Darussalam	Italy	Sierra Leone
Cambodia	Jamaica	Singapore
Cameroon	Japan	Slovenia
Canada	Kenya	Spain
China (Hong Kong Special Administrative Region)	Latvia	Sri Lanka
Colombia	Liberia	Sweden
Comoros	Lithuania	Tanzania
Congo	Madagascar	Tonga
Croatia	Malta	Trinidad and Tobago
Cyprus	Marshall Islands	Tunisia
Denmark	Mauritius	Turkey
Djibouti	Mexico	United Arab Emirates
Dominica	Monaco	United Kingdom
Dominican Republic	Morocco	Uruguay
Fiji	Mozambique	Vanuatu
Finland	Namibia	Venezuela
	Netherlands	
	New Zealand	
	Nigeria	
	Norway	
	Oman	

*1 State which has deposited instruments of accession, but for which
the Fund Protocol does not enter into force until date indicated*

**States Parties to the
1992 Protocol to the Civil Liability Convention
but not to the 1992 Protocol to the Fund Convention
as at 10 May 2004**

(and therefore not Members of the 1992 Fund)

7 States for which Protocol to Civil Liability Convention is in force

Chile	Egypt	Indonesia	Switzerland
China	El Salvador	Romania	

*3 States which have deposited instruments of accession,
but for which the Protocol to the Civil Liability Convention
does not enter into force until date indicated*

Vietnam	17 June 2004
Bulgaria	28 November 2004
Kuwait	16 April 2005

**States Parties to the 1969 Civil Liability Convention
as at 10 May 2004**

44 States Parties to the 1969 Civil Liability Convention

Albania	Ghana	Portugal
Benin	Guatemala	Saint Kitts and
Brazil	Guyana	Nevis
Cambodia	Honduras	Sao Tomé and
Chile	Indonesia	Principe
Colombia	Jordan	Saudi Arabia
Costa Rica	Kazakhstan	Senegal
Côte d'Ivoire	Kuwait	Serbia &
Dominican	Latvia	Montenegro
Republic	Lebanon	South Africa
Ecuador	Luxembourg	Syrian Arab
Egypt	Malaysia	Republic
El Salvador	Maldives	Tuvalu
Equatorial Guinea	Mauritania	United Arab
Estonia	Mongolia	Emirates
Gambia	Nicaragua	Yemen
Georgia	Peru	

Note: the 1971 Fund Convention ceased to be in force on 24 May 2002

APPLICATION OF THE FUND CRITERIA FOR THE ADMISSIBILITY OF CLAIMS: THE EXAMPLE OF THE “ERIKA” INCIDENT

JEAN-SERGE ROHART*

1. Introduction

The maximum amount of compensation payable by the International Oil Pollution Compensation Fund 1992 (1992 Fund) for any particular incident is limited to 135 million SDR (ie. FFr. 1,211,966,881 or €uros 184,763,159.93 for the “Erika” incident), which includes the amount of compensation effectively paid by the shipowner and his insurer under the 1992 Civil Liability Convention (*Fund Convention 1992 Article 4.4*).

Where the amount of established claims exceeds that maximum figure, the amount available is to be distributed to the claimants in proportion to their established claims. This means that all claimants must be treated equally. It is also necessary, when deciding which claims are admissible, for a line to be drawn between the victims who are most affected by the pollution and other claimants for whom the link of causation with the contamination is more remote.

For these reasons Funds’ governing bodies have decided that:

“if the Fund were to decide to compensate too broad a range of claims, this would, if the total amount of the established claims were to exceed the aggregate amount available under the Civil Liability Convention and the Fund Convention, have the effect, by the impact of Article 4.5 of the latter Convention, of reducing the compensation payable to the victims most directly affected by the pollution.”

It is for this reason that the Funds’ governing bodies (ie. the Assembly composed of representatives of all the Member States and the Executive Committee composed of representatives of the 15 Member States elected by the Assembly) have laid down a number of criteria for the purpose of deciding which claims are admissible for compensation under the 1992 Conventions, and which claims are not admissible.

2. Compensation based on uniform criteria for the admissibility of claims.

In the light of the experience acquired in the early 1990s as a result of certain major incidents involving the International Oil Pollution

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¹ In particular the “Haven” (Italy/France, 1991), the “Aegean Sea” (Spain, 1992) and the “Braer” (United Kingdom, 1993)

Compensation Fund 1971 (hereafter called the “1971 Fund”),¹ in 1993 the 1971 Fund Assembly set up an Intersessional Working Group with a mandate to examine the criteria for the admissibility of claims for compensation for “*pollution damage*” and “*preventive measures*” within the framework of both the 1969 and 1971 Civil Liability and Fund Conventions, and of the 1992 Protocols to these Conventions.

In particular this Working Group was instructed to examine the problems linked to compensation claims for “pure economic loss” and for costs of preventive measures undertaken to prevent and limit pure economic loss. This Group, under the chairmanship of Mr Charles Coppolani, a French senior civil servant attached to the French Ministry of Finance, was open to all Member States and its work was based on a vast number of documents provided by governments and international organizations, both intergovernmental and non-governmental.

The conclusions of this Working Group are contained in a report issued on 20 June 1994 and subsequently examined by the 1971 Fund Assembly at its 17th session held in October 1994. The Assembly endorsed the conclusions of the Working Group after deciding that a uniform interpretation of the definition of “*pollution damage*” was essential for the functioning of a compensation regime set up by the Civil Liability and Fund Conventions. The Assembly also considered that it was essential for the Fund, so far as possible, to take a consistent approach in all its decisions with respect to the admissibility of claims, regardless of the legal system of the Member State in which the damage occurred. More particularly, the Assembly endorsed the conclusion of the Intersessional Working Group that the Fund, within the framework of the Conventions, should pay compensation only for claims falling within the definition of the terms “*pollution damage*” and “*preventive measures*” laid down in these Conventions. The Assembly considered it essential that, when deciding upon the interpretation of these definitions, the courts of Member States should take account of the fact that these have been laid down in international treaties. It was also argued in this context that decisions taken by the Assembly and Executive Committee of the Funds as to the interpretation of these definitions should be treated as constituting agreements between the Parties to the Fund Convention in accordance with paragraphs a) and b) of article 31.3 of the Vienna Convention on the Law of Treaties.

At its first session held in June 1996, the 1992 Fund Assembly adopted a Resolution on the admissibility of claims for compensation in which it stated that the report of the 1971 Fund’s Intersessional Working Group on this subject should be used also as a basis for the policy of the 1992 Fund with regard to the criteria for admissibility of claims.

In connection with the “Sea Empress” incident (UK, 1996), the 1971 Fund’s Executive Committee held at its 53rd session in April 1997 that as regards claims from the tourism sector, it was necessary to draw a distinction between, on the one hand, claimants who sell their goods or services directly to tourists and whose trade suffers directly from a reduction in the number of tourists in the region affected by an oil spill, and on the other hand, claimants

who supply neither goods nor services directly to tourists but only to other businesses which in turn supply the tourists. The Committee considered that in general there was not a sufficient degree of proximity between the contamination and the losses suffered by the second category of claimants and that claims of this type would not normally be admissible for compensation.

The Funds' "Claims Manual" sets out all the criteria for admissibility in a single document. After expressly reciting the definitions of "*pollution damage*" and "*preventive measures*" the Manual sets out the various criteria for the admissibility of claims for compensation adopted by the Funds' governing bodies as well as the steps to be taken by the victims for presenting their claims for compensation.

Several editions of the Claims Manual have been published over the years. Each of these editions was submitted to the Funds' governing bodies for approval before publication. At its session in May 1998 the 1992 Fund Assembly examined the draft of a new edition of the Manual and noted that this reflected the development of certain aspects of the Fund's policy on the admissibility of claims in the tourism sector. The Assembly adopted this revised text, so that the 1998 edition of the Manual incorporated the criterion which had been adopted in 1997 by the Fund's Executive Committee for economic loss suffered by professionals in the tourism sector who do not supply goods or services directly to tourists.

3. Admissibility of claims relating to economic loss: "consequential loss" and "pure economic loss"

It was decided by the Funds' governing bodies that claims for loss of income suffered as a result of an oil spill brought by owners or operators of contaminated property would in principle be admissible ("*consequential loss*"). In this respect the Manual cites as an example a fisherman whose nets were soiled and who therefore suffered a loss of income. Such a claim would in principle be admissible.

As regards claims relating to "*pure economic loss*", in other words, loss of profit suffered by persons whose property was not damaged by pollution, such claims would only be eligible for compensation under the 1992 Conventions if they were for loss or damage caused by contamination. In this respect the Manual cites the example of a fisherman whose boat and nets were not contaminated but for whom it is impossible to work as normal because the usual fishing zone is polluted and he cannot fish elsewhere. Such a claim would also in principle be admissible, subject to meeting certain criteria.

In each of the two categories of loss, in order to be admissible the claim must of course meet a certain number of criteria for admissibility and in particular there must be a sufficient link of causation between the loss suffered and the contamination.

In this respect the Funds' governing bodies have decided that a "*sufficient degree of proximity*", that is to say a sufficient causal link, must exist between the contamination and the loss or damage suffered by the

claimant. In particular “a claim should not be considered to be admissible for the sole reason that the loss or damage in question would not have occurred had the oil spill not happened.”

They have also stated that in applying these criteria account should be taken of the following elements:

- *“the geographic proximity between the claimant’s activity and the contamination,*
- *the degree to which a claimant is economically dependent on an affected resource,*
- *the extent to which a claimant has alternative sources of supply,*
- *the extent to which a claimant’s business forms an integral part of the economic activity within the area affected by the spill.”*

The Funds’ governing bodies also stated that account should be taken of the extent to which the claimant has been able to mitigate his loss.

Finally, we have seen above that with regard to the tourism sector, the Fund’s governing bodies have distinguished between a) claimants who sell their goods or services directly to tourists and whose business is directly affected by a drop in the number of tourists visiting the area affected by an oil spill, and b) claimants who supply goods or services to other businesses in the tourist industry but not directly to tourists. The Funds’ governing bodies consider that in the second category there is not generally a sufficient degree of proximity between the contamination and the claimants’ alleged losses. Claims of this type have therefore not normally been considered admissible in principle.

4. Application of the criteria by the courts of the Member States

The importance of the uniformity of interpretation and application of the 1969/1971 and 1992 Conventions has been addressed many times by the Funds’ governing bodies, most recently by the 1992 Fund’s Administrative Council. In its first session held in May 2003, the Council acting on behalf of the Assembly adopted a Resolution (Resolution no. 8) stressing the importance of the uniformity of application of the 1992 Conventions in order to ensure equality of treatment for all claimants following any incident arising in any Member State. This principle is of particular importance in cases where the same incident causes damage by pollution in several States at the same time. This applies to the damage caused by the sinking of the “Prestige” since the pollution has affected France, Spain, Portugal and the United Kingdom, and the amount available to compensate the victims is insufficient to enable all the damage suffered to be compensated in full. In such a situation, the equality of treatment of the victims in all the affected Member States can only be ensured if the courts of these States apply the 1992 Conventions uniformly and apply the same criteria for the admissibility of claims for compensation. This Resolution states that the Administrative Council,

“**Recognising** that, under Article 31, paragraph 3, of the Vienna Convention on the Law of Treaties 1969, for the purpose of the

interpretation of treaties there shall be taken into account any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions and any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation,

Drawing attention to the fact that the Assembly, the Executive Committee and the Administrative Council of the International Oil Pollution Compensation Fund 1992 (1992 Fund) and the governing bodies of its predecessor, the International Oil Pollution Compensation Fund 1971 (1971 Fund), composed of representatives of Governments of the States Parties to the respective Conventions, have taken a number of important decisions on the interpretation of the 1992 Conventions and the preceding 1969 and 1971 Conventions and their application, which are published in the Records of Decisions of the sessions of these bodies, for the purpose of ensuring equal treatment of all those who claim compensation for oil pollution damage in States Parties,

Emphasising that it is vital that these decisions are given due consideration when the national courts in the States Parties take decisions on the interpretation and application of the 1992 Conventions, **Considers** that the courts of the States Parties to the 1992 Conventions should take into account the decisions by the governing bodies of the 1992 Fund and the 1971 Fund relating to the interpretation and application of these Conventions.”

5. Court judgments in France in respect of claims against the 1992 Fund following the “Erika” incident

Judgments by the Commercial Court in Lorient

In December 2003 the Commercial Court in Lorient rendered judgments in respect of four claims in the tourism and fisheries sectors which had been rejected by the shipowner/his insurer and the 1992 Fund.

One of these claims related to loss of income allegedly suffered by the owner of a property in the affected area which was to be let to other businesses in the tourism sector (and not directly to tourists) but, according to the claimant, could not be let due to the negative effects of the “Erika” incident.

In its judgment the Commercial Court stated that its function was to establish whether there was damage and, if so, to assess it in accordance with the criteria of French law. The Court stated that it was not bound by the criteria for admissibility laid down by the 1992 Fund. The Court ordered the shipowner, Steamship Mutual and the 1992 Fund to pay compensation to the claimant for his loss of rental income.

The three other judgments related to claims by a person selling and letting machines for the production of ice cream, by a hotel situated in Carnac and by an oyster grower in Morbihan. These claims had been rejected by the 1992 Fund on the ground that the claimants had not shown that there was a sufficient link of causation between the alleged loss and the contamination caused by the “Erika” oil spill. After having made the same statement in

respect of the criteria to be applied and stating that it was not bound by the Fund's criteria, the Court appointed an expert to investigate whether there was a link of causation between the alleged loss and the oil pollution.

The Executive Committee decided that the 1992 Fund should pursue appeals against the four judgments, considering the importance of the issue for the proper functioning of the compensation regime based on the 1992 Conventions.

A hearing took place on 20 April 2004 before the Court of Appeal of Rennes in respect of the first claim referred to hereabove, and the judgment is expected to be given on 25 May 2004.

Judgment by the Civil Court in Nantes

In January 2004 the Civil Court (Tribunal de Grande Instance) in Nantes rendered a judgment in respect of claims for pure economic loss by the owners of two hotels located in the centre of Nantes. These claims had been rejected by the 1992 Fund since, in the Fund's view, they did not fulfill the criteria for admissibility laid down by the Fund's governing bodies in that there was not a reasonable degree of proximity between the alleged losses and the pollution. The Court rejected the claims in the light of the Fund's criteria which, in the Court's view, were dictated by common sense.

Judgment by the Commercial Court in Rennes

In April 2004 the Commercial Court in Rennes rendered a judgment in respect of a claim by a company in Rennes which carries out activities both as a tour operator selling hiking tours in Brittany, Ireland and the Channel Islands and as a traditional travel agency. The company claimed compensation for losses allegedly suffered during 2000 as a result of reduction of sales due to the "Erika" incident.

This claim had been rejected by the 1992 Fund on the ground that it did not fulfil the Fund's criteria for admissibility. It was considered that as regards sales through other tour operators ('second degree tourism claims'), there was not a reasonable degree of proximity between the contamination and the alleged losses. As for sales direct to tourists, the Fund considered that no loss had been proven.

The Court rejected the claim. Amongst the reasons given for the judgment the following can be retained:

- *"Under the French Constitution, international treaties ratified by France take precedence over French laws.*
- *The criteria for admissibility were established by the Fund in order to achieve uniformity so as to ensure equal treatment of victims. For a claim to be admissible, there must under the Fund Convention be a sufficient link of causation between the contamination and the damage suffered by the claimant. This link of causation is determined by economic factors, such as the claimant's degree of dependence in relation to the incident, geographical proximity, diversity of the claimant's activities and historical economic results.*

Pollution of the Marine Environment

- *A major part of the tours organised were sold through tour operators. These sales must be considered as “second degree” under the 1992 Fund Convention and are therefore not admissible.*

For these reasons, and examined on the basis of the 1992 Convention and only on the basis of that Convention, the claim was rejected.”

It is of course too early as yet to speak of “Erika precedents” in France, since the few judgments cited above are only the first in a long list to come (approximately 350 cases are due to be heard in the next month). There is no doubt, however, that the solutions adopted by the first courts seized (in particular the Court of Appeal in Rennes) will influence the outcome of all those currently pending before the French courts.

Paris, 19th May 2004

**REPORT ON THE SEVENTH MEETING OF THE THIRD
INTERSESSIONAL WORKING GROUP
REVIEW OF THE INTERNATIONAL COMPENSATION REGIME**

NOTE BY THE DIRECTOR

EXECUTIVE SUMMARY

Mandate

The Working Group set up by the 1992 Fund Assembly in April 2000 held a meeting in February 2004 under the Chairmanship of Mr A Popp QC (Canada) on the basis of the following mandate given by the Assembly at its October 2001 session:

- (a) to continue an exchange of views concerning the need for and the possibilities of further improving the compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention, including issues mentioned in paragraph 27.3 of document 92FUND/A.6/4, which had already been identified by the Working Group, but not yet resolved; and
- (b) to report to the next regular session of the Assembly on the progress of its work and make such recommendations as it may deem appropriate.

The issues referred to in the Assembly's mandate were as follows:

- (a) shipowners' liability
- (b) environmental damage
- (c) alternative dispute settlement procedures
- (d) non-submission of oil reports
- (e) clarification of the definition of 'ship'
- (f) application of the contribution system in respect of entities providing storage services
- (g) uniformity of application of the Conventions
- (h) various issues of a treaty law nature.

Discussions at the meeting in February 2004

Study of the costs of spills in relation to the past, current and future limitation amounts of the 1992 Conventions (Section 6)

The Working Group had requested the Director to undertake an independent study of the costs of past oil spills in relation to the past, current and future limitation amounts of the compensation Conventions. Preliminary analysis of the raw data submitted by P&I Clubs of the International Group had indicated that considerable further analysis would be required before it could be used to provide useful statistics. The Director was of the view that the study would not be completed until May 2004 at the earliest.

The Working Group decided that whilst the completion of the costs study should not hinder its discussion on the revision of the 1992 Civil Liability Conventions, any decisions by the Group should be on a provisional basis pending the outcome of the study.

The question as to whether the 1992 Civil Liability Convention should be revised in respect of shipowners' liability and related issues (Section 7)

Level of shipowners' limitation amount and its relationship with the compensation funded by oil receivers

The Working Group considered information and/or proposals relating to the shipowners' liability presented by the delegations of Australia, Canada, Finland, France, the Netherlands, the Russian Federation and the United Kingdom (Australia *et al*), the Italian delegation, the observer delegation of the Oil Companies Marine Forum (OCIMF), the observer delegation of the International Group of P&I Clubs and the observer delegations of the International Chamber of Shipping (ICS) and the International Association of Independent Tanker Owners (INTERTANKO).

The delegations of Australia *et al* proposed two options for consideration. Under the first option the limit of liability for small ships and the steepness of the slope of the SDR/tonnage line would be increased, although no specific figures were presented. The second option envisaged that for incidents involving ships above a certain tonnage, say 5 000 gross tonnes, there would be a balanced sharing of financial responsibility between the shipowner and cargo interests, regardless of the ship's tonnage, up to the existing limit under the 1992 Conventions of 203 million SDR.

The Italian delegation proposed increasing the shipowners' limit of liability under the 1992 Civil Liability Convention and the establishment of an additional tier of compensation, which would be funded by individual cargo owners as opposed to receivers.

The observer delegation of OCIMF proposed two options for consideration. The first option envisaged revising the shipowners' limit under the 1992 Civil Liability Convention to 90 million SDR for all ships, irrespective of size, and revising the Supplementary Fund Protocol to introduce the sharing of contributions to the Supplementary Fund by shipowners and oil receivers on an unspecified percentage basis. The second option involved increasing the limit of liability under the 1992 Civil Liability Convention to around 200 million SDR for all ships, irrespective of size, and an increase of the limit under the 1992 Fund Convention by a corresponding amount.

The observer delegation of the International Group of P&I Clubs did not make any specific proposal, but indicated that in order to address the oil industry's concerns about the impact of the Supplementary Fund on the concept of cost sharing the Clubs were prepared to consider alternative proposals for voluntary solutions to the one originally suggested by the Group of increasing the limits for small ships only.

The observer delegations of ICS and INTERTANKO concurred with the

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views of the delegation of the International Group of P&I Clubs that any concerns about the impact of the Supplementary Fund on the equitable sharing of the costs of compensation between shipowners and cargo interests should be addressed through voluntary industry solutions.

There was strong support for maintaining a simple and workable international compensation scheme, but the Working Group was divided on whether or not to amend the provisions relating to the shipowners' liability. Some delegations favoured voluntary industry solutions to the potential financial imbalance created by the Supplementary Fund whilst others considered that liability and compensation for oil pollution damage gave rise to important questions of civil law that fell within the field of public policy, which had to be addressed by legislation.

The Chairman stated in his summing up of the discussion that there appeared to be sufficient momentum to keep the question of shipowners' liability under review for the next meeting when, hopefully, the results of the Director's study of the costs of spills would be available. He urged delegations to continue informal discussions in order to achieve consensus, with a view to consolidating the various options that had been put forward or to developing clear proposals regarding the voluntary schemes.

Substandard transportation of oil and the right of the shipowner to limit liability

The Working Group considered a number of proposals submitted respectively by the delegations of Canada and the United Kingdom, the delegation of France, the delegation of Japan and the observer delegation of OCIMF.

The delegations of Canada and the United Kingdom proposed exploring how to introduce cost disincentives to deter substandard shipping whilst at the same time ensuring that operators of wellmaintained tankers were not competitively disadvantaged. They proposed that the Working Group give consideration to introducing into the compensation Conventions a formula by which the level of liability of shipowners could be automatically increased in the case of an incident involving a substandard tanker, thereby penalising low operating and maintenance standards and reducing any unjust financial burden on contributors to the 1992 Fund.

The French delegation proposed that an exception should be made to a shipowner's right of limitation when the damage appeared to result from the structural condition of the ship, which in its view was consistent with Article V.2 of the 1992 Civil Liability Convention, and that the 1992 Fund should systematically take recourse actions against charterers following incidents caused by ships with structural defects. That delegation also proposed that when shipowners were denied the right to limit liability the insurer should continue to provide cover.

The Japanese delegation proposed an amendment to the 1992 Civil Liability Convention to the effect that if an incident caused by a substandard ship registered or chartered by a receiver in a Contracting State to the Supplementary Fund Protocol were to result in compensation being paid by

the Supplementary Fund, the owner of that ship should bear an additional liability to that under the 1992 Civil Liability Convention, either on the basis of a fixed amount or as a percentage of the compensation paid by the Supplementary Fund, whichever was the lower. That delegation also proposed that, in addition to increasing the liability of shipowners, receivers of oil after carriage in a substandard ship in a State where an incident occurred should make additional contributions to the Supplementary Fund, firstly for an amount equal to the shipowners' additional liability, or the shipowners' liability in total, and secondly for an amount calculated on the basis of the receivers share of oil received and against the net balance of compensation from the Supplementary Fund.

The observer delegation of OCIMF proposed an amendment to the test of a shipowner's right to limit liability, for example by reverting to the 'fault and privity' test in the 1969 Civil Liability Convention, with the caveat that the 1992 Fund should continue to pay compensation pending resolution of any liability dispute.

The observer delegation of the International Group of P&I Clubs expressed the view that the compensation system should not be used to punish the substandard operator, bearing in mind that shipowners with poor claims records already paid more by way of insurance premiums and that a lowering of the threshold of a shipowner's right to limit liability would lead to the politically unacceptable result that the oil industry would rarely contribute to the cost of compensation for pollution damage.

These views were supported by a number of delegations, which also drew attention to the difficulties of defining 'substandard' ship. Other delegations expressed a willingness to explore further the possibility of embracing the issue of substandard transportation of oil within the legal framework of the compensation Conventions subject to further clarification of some of the conditions under which the shipowner would lose the right to limit liability.

Definition of 'ship' (Section 8)

The Working Group considered treaty texts submitted by Australia *et al* to amend the definition of 'ship' under the 1992 Conventions in order to clarify the circumstances under which the Conventions would apply to unladen tankers, and in particular whether the proviso in Article I.1 of the 1992 Civil Liability Convention applied to all tankers and not only to ore/bulk/oil ships (OBOs). Two options were put forward by the sponsoring delegations, one which sought to remove the ambiguity in the definition as currently interpreted by the 1992 Fund Assembly, ie that the proviso in the definition applied to all tankers, the other amending the definition so as to exclude from the proviso all dedicated tankers, including those constructed or adapted for the carriage of non-persistent oil.

Some delegations favoured the existing interpretation, making the point that the compensation Conventions related solely to incidents involving the transportation of persistent oil, and that excluding all dedicated tankers from

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the proviso would result in incidents involving spills of bunker fuel from chemical tankers being covered by the Conventions which, in their view, had never been the intention when the Conventions were drafted.

Some delegations were not convinced of the need to amend the definition of 'ship'. However, there was an overall preference for amending the definition to exclude from the proviso dedicated tankers, although it was considered that the draft text proposed by Australia *et al* was ambiguous and that further work on it was therefore required.

Tacit amendment procedures (Section 9)

The Working Group considered a proposal by the delegations of Australia *et al* to amend the tacit amendment procedure to enable the financial limits of the Conventions to be revised on a more regular basis along similar lines to the procedures contained in the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air. The limits under that Convention are reviewed every five years and revisions become effective six months after States Parties had been notified thereof unless a majority of States registered their disapproval within three months after the notification.

There was considerable support for the proposal in principle. Although some delegations favoured the approach adopted under the 1999 Montreal Convention, others preferred the procedure in Article 24 of the Supplementary Fund Protocol, which was modelled on the tacit amendment procedure in the 1992 Fund Convention, but with considerably shorter time periods for the various steps involved in increasing the limits.

The Working Group also considered a proposal by the delegations of Australia *et al* that the tacit amendment procedure should be used to introduce certain administrative changes that could improve or solve problems relating to the operation of the 1992 Fund, such as the functions of the Assembly and the Director and the requirements for the constitution of a quorum of the Assembly.

A number of delegations, whilst acknowledging the potential benefits of introducing tacit amendment procedures in respect of administrative matters, particularly to address the problem relating to a quorum, stated that caution was required to ensure that any changes were consistent with international law and that amendments to administrative procedures could affect the constitution of the Fund.

In his summing up the Chairman stated that the issue of a quorum was a serious one, particularly if the lack of a quorum were to ever prevent the Fund from dealing with a major pollution incident, and that this issue therefore needed further consideration in order to find a lasting solution.

Refinement of the contribution system (Section 10)

The Working Group noted a proposal by the Netherlands delegation to incorporate into a revised version of the 1992 Convention two provisions

contained in the 1996 Convention on liability and compensation for damage in connection with the carriage of hazardous and noxious substances by sea (HNS Convention), one relating to the concept of 'receiver' and the other relating to the definition of 'contributing oil'. The former would give storage companies, under certain conditions, the possibility to pass levies for contributions to their principals, whilst the latter would result in oil which was transferred directly, or through a port or terminal, from one ship to another, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination being considered as contributing oil only in respect of receipt at the final destination.

Future work (Section 11)

Due to lack of time not all issues raised by delegations in documents were addressed, namely: refinement of the contribution system; submission of oil reports and payment of contributions; compulsory insurance for ships carrying less than 2 000 tonnes of cargo; merger of the Civil Liability and Fund Conventions into a single Convention; deletion of the six year time bar provisions in the 1992 Conventions; and, minimum entrance fee to the Fund.

It was agreed that the agenda for the next meeting of the Working Group should, in addition to addressing the above outstanding issues, include consideration of more precise proposals, preferably in the form of treaty texts, in respect of a total compensation package, including the issue of substandard shipping, and proposals by industry delegations for voluntary schemes to address issues relating to the sharing of costs of oil spills and the substandard transportation of oil.

Next meeting

The Working Group decided to hold a meeting during the week of 24 May 2004 in connection with sessions of the IOPC Funds' governing bodies.

1 Introduction

1.1 The 3rd intersessional Working Group was established by the 1992 Fund Assembly at its 4th extraordinary session, held in April 2000, to assess the adequacy of the international compensation system created by the 1992 Civil Liability Convention and the 1992 Fund Convention. The Group held its seventh meeting from 24 to 27 February 2004 under the Chairmanship of Mr Alfred Popp QC (Canada)¹.

1.2 In accordance with the decision of the Assembly, 1971 Fund Member States as well as States and Organisations which had observer status with the 1992 Fund were invited to participate as observers.

¹ The sixth meeting of the Working Group, which was due to have been held on 23 October 2003, was cancelled due to insufficient time being available during the October 2003 sessions of the IOPC Funds' governing bodies.

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2 Participation

2.1 The following Member States were represented at the Working Group's seventh meeting:

Algeria	Germany	Panama
Antigua and Barbuda	Ghana	Philippines
Argentina	Greece	Poland
Australia	Grenada	Portugal
Bahamas	India	Republic of Korea
Belgium	Ireland	Russian Federation
Cameroon	Italy	Singapore
Canada	Japan	Spain
China (Hong Kong Special Administrative Region)	Liberia	Sweden
Colombia	Malta	Tanzania
Congo	Marshall Islands	Trinidad and Tobago
Cyprus	Mexico	Tunisia
Denmark	Netherlands	United Arab Emirates
Finland	New Zealand	United Kingdom
France	Nigeria	Vanuatu
	Norway	Venezuela

2.2 The following non-Member States were represented as observers at the meeting:

Brazil	Ecuador	Pakistan
Chile	Iran (Islamic Republic of)	Saudi Arabia

2.3 The following intergovernmental and international non-governmental organisations participated in the Working Group's meeting as observers:

Intergovernmental organisations:

International Maritime Organization (IMO)
International Oil Pollution Compensation Fund 1971
European Commission

International non-governmental organisations:

BIMCO
Comité Maritime International (CMI)
Federation of European Tank Storage Associations (FETSA)
Friends of the Earth International (FOEI)
International Association of Independent Tanker Owners
(INTERTANKO)
International Chamber of Shipping (ICS)

International Group of P&I Clubs
 International Salvage Union (ISU)
 International Tanker Owners Pollution Federation Limited (ITOPF)
 Oil Companies International Marine Forum (OCIMF)

3 The Working Group's mandate

3.1 At its 6th session, held in October 2001, the Assembly gave the Working Group the following revised mandate (document 92FUND/A.6/28, paragraph 6.49):

- (a) to continue an exchange of views concerning the need for and the possibilities of further improving the compensation regime established by the 1992 Civil Liability Convention and the 1992 Fund Convention, including issues mentioned in paragraph 27.3 of document 92FUND/A.6/4, which had already been identified by the Working Group, but not yet resolved; and
- (b) to report to the next regular session of the Assembly on the progress of its work and make such recommendations as it may deem appropriate.

3.2 The issues referred to in the Assembly's decision were as follows:

- (a) shipowners' liability
- (b) environmental damage
- (c) alternative dispute resolution procedures
- (d) non-submission of oil reports
- (e) clarification of the definition of 'ship'
- (f) application of the contribution system in respect of entities providing storage services
- (g) uniformity of application of the Conventions
- (h) various issues of a treaty law nature

4 Documents considered by the Working Group at its seventh meeting

4.1 The following documents were submitted to the Working Group's seventh meeting:

92FUND/WGR.3/19/14	List of previous documents (Director)
92FUND/WGR.3/19	Study of the costs of past spills in relation to the current and future limitation amounts of the 1992 Conventions (Director)
92FUND/WGR.3/19/1	Balance of financial responsibility between shipowners and cargo interests (Australia, Canada, Finland, France, the Netherlands, New Zealand, the Russian Federation and the United Kingdom)
92FUND/WGR.3/19/2	Definition of 'ship', tacit amendment procedure, non-submission of oil reports and insurance cover for vessels carrying less than 2 000 tonnes of oil as cargo

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	(Australia, Canada, France, Italy, the Netherlands, New Zealand, the Russian Federation and the United Kingdom)
92FUND/WGR.3/19/3	Review of the objectives and purposes of the Conventions on Liability and Compensation for Oil Pollution Damage (OCIMF)
92FUND/WGR.3/19/4	Possible improvements to the International Compensation Regime for Oil Pollution Damage (OCIMF)
92FUND/WGR.3/19/5	Refinement of the contribution system (the Netherlands)
92FUND/WGR.3/19/6	Amendment of Article VIII of the 1992 Civil Liability Convention and Article 6 of the 1992 Fund Convention (Friends of the Earth International)
92FUND/WGR.3/19/7	Insurance, certification and liability considerations (Canada and the United Kingdom)
92FUND/WGR.3/19/8	Issues relating to the liability of the shipowner and insurer (France)
92FUND/WGR.3/19/9	Shipowner's right to limit his liability, channelling of liability and sharing of compensation payments (International Group of P&I Clubs)
92FUND/WGR.3/19/10	Measures taken by P&I Clubs in relation to substandard shipping (International Group of P&I Clubs)
92FUND/WGR.3/19/11	Liability of cargo owners (Italy)
92FUND/WGR.3/19/12/Rev.1	Promotion of quality shipping (Japan)
92FUND/WGR.3/19/13	Shipowners' liability, sharing of compensation payments and substandard oil transportation (ICS and INTERTANKO)
92FUND/WGR.3/19/15	An audited quality system of ships (International Group of P&I Clubs)
92FUND/WGR.3/19/16	Tank storage companies should be entitled to disclose their principals to avoid payment of contributions (FETSA)

4.2 During the discussions reference was made to the Working Group's Reports on its second, third, fourth and fifth meetings (documents 92FUND/A.6/4 (cf 92FUND/WGR.3/9), 92FUND/A.7/4 (cf 92FUND/WGR.3/12) and 92FUND/A/ES.7/6 (cf 92FUND/WGR.3/15)). As regards the documents submitted to these meetings, reference is made to these reports.

5 Issues considered at the Working Group's seventh meeting

The Working Group endorsed the Chairman's proposal to structure the discussions as follows:

1. Study of the costs of spills in relation to past, current and future limitation amounts of the 1992 Conventions.
2. The question as to whether the 1992 Civil Liability Convention should be revised in respect of shipowners' liability and related issues:
 - (a) level of shipowners' limitation amount and its relationship with the compensation funded by the oil receivers;
 - (b) substandard transportation of oil;
 - (c) criterion governing the shipowners' right to limitation;
 - (d) insurer's right to revoke cover.
3. Other issues where amendments might be considered if a revision were to take place:
 - (a) definition of 'ship';
 - (b) tacit amendment procedures;
 - (c) refinement of the contribution system;
 - (d) time bar provisions.

6 Study of the costs of spills in relation to past, current and future limitation amounts of the 1992 Conventions

6.1 The Working Group took note of the information contained in document 92FUND/WGR.3/19 submitted by the Director. It was noted that the Director had received, via the International Tanker Owners Pollution Federation Ltd (ITOPF), cost data that had been submitted by all but two of the P&I Clubs belonging to the International Group in respect of some 7 800 pollution incidents. It was also noted that a preliminary analysis of the raw data had indicated that considerable further analysis would be required before it could be used to provide useful statistics, since the Clubs had presented figures of total payments per incident which did not, for example, differentiate between payments made under the Civil Liability Conventions, payments made in excess of the Conventions' limits or payments made by way of reimbursements to the Funds. It was further noted that the Director was of the view that the study would not be completed until May 2004 at the earliest.

6.2 The observer delegation of the International Group of P&I Clubs stated that, whilst it regretted that the considerable amount of data submitted by the Clubs was not in a form that could be used for the study, many of the Clubs did not retain incident files for more than two years after the files were closed and that, as a result, complete records of compensation payments were not always available. It further stated that the Clubs were currently reviewing their records to establish the extent to which they could distinguish between payments for compensation for pollution damage and other costs, such as those in respect of wreck removal and legal and technical fees, and that they would report back to the 1992 Fund in the near future.

6.3 The Working Group decided that whilst the completion of the costs study

should not hinder its discussion on the revision of the 1992 Civil Liability Convention, any decisions by the Group should be on a provisional basis pending the outcome of the study.

7 Shipowners' liability and related issues

7.1 The Working Group took note of the information contained in the following documents:

92FUND/WGR.3/19/1 (Australia, Canada, Finland, France, the Netherlands, the Russian Federation and the United Kingdom);

92FUND/WGR.3/19/2 (Australia, Canada, France, Italy, the Netherlands, New Zealand, the Russian Federation and the United Kingdom);

92FUND/WGR.3/19/3, 92FUND/WGR.3/19/4 (Oil Companies International Marine Forum);

92FUND/WGR.3/19/7 (Canada and the United Kingdom);

92FUND/WGR.3/19/8 (France);

92FUND/WGR.3/19/9, 92FUND/WGR.3/19/10, 92FUND/WGR.3/19/15 (International Group of P&I Clubs);

92FUND/WGR.3/19/11 (Italy);

92FUND/WGR.3/19/12/Rev.1 (Japan);

92FUND/WGR.3/19/13 (International Chamber of Shipping and International Association of Independent Tanker Owners).

Level of shipowners' limitation amount and its relationship with the compensation funded by oil receivers

7.2 The United Kingdom delegation introduced document 92FUND/WGR.3/19/1 on behalf of the sponsoring delegations of Australia, Canada, Finland, France, the Netherlands, the Russian Federation and the United Kingdom (Australia *et al*) and stated that following the adoption of the Supplementary Fund Protocol in 2003 it was now necessary to carry out a fundamental review of the financial responsibilities in the underlying regimes with the aim of introducing greater equity in contributions between shipowners and insurers on the one hand and cargo interests on the other. The sponsors of the document outlined two possible options, one increasing the shipowners' tonnage-based limits under the 1992 Civil Liability Convention, the other reducing the limits under that Convention but introducing a sharing of financial responsibility between shipowners and cargo interests up to the existing 1992 Fund limit.

7.3 The Working Group noted that under the first option the limit of liability for small ships up to a certain, but unspecified, tonnage would be increased beyond the existing limit of 4.5 million SDR for small ships. It was noted that for larger ships the sponsoring delegations had proposed that the additional amount in SDR per gross tonne should be increased in such a way that the existing limit of 90 million SDR under the 1992 Civil Liability Convention would apply to ships with a lower tonnage than is currently the case. It was

also noted that in proposing these amendments to the ‘small ship minimum’ and the slope of the SDR/tonnage line the sponsoring delegations had not specified any figures. It was noted, however, that those delegations had argued that experience of past incidents had clearly shown that the tonnage of a particular vessel was not necessarily the most important factor in determining the total cost of claims arising from an incident, and that a number of incidents involving ships at the lower end of the tonnage scale, such as the *Nakhodka* (13 195 GT) and the *Erika* (19 666 GT), had resulted in the financial exposure of cargo interests being disproportionate to that of the shipowner. The Working Group noted that the proposal went beyond the proposed voluntary Small Tanker Oil Pollution Indemnification Agreement (STOPIA) that was being developed by the International Group of P&I Clubs which would only apply to vessels entered with Clubs belonging to the International Group and would be limited to pollution damage in States that were parties to the Supplementary Fund Protocol. It was noted that the sponsoring delegations believed that the voluntary nature and other limitations of STOPIA were such that a revision of the 1992 Civil Liability Convention limits through an amendment of Article V was called for.

7.4 The Working Group noted that under the second option the sponsoring delegations had proposed that for incidents involving ships over a given tonnage, say 5 000 gross tonnage, for which the shipowners’ limit was currently 4.5 million SDR, there would be a balanced sharing of financial responsibility between the shipowner and the cargo interests, regardless of the ship’s tonnage, of the payments of claims up to the existing limit under the 1992 Conventions of 203 million SDR. It was noted that the sponsoring delegations had not specified how the payments of claims should be shared under the proposal, and that this sharing would in their view have to be decided by a Diplomatic Conference. It was noted, however, that the sponsoring delegations envisaged that if the total claims were to exceed the limit under the 1992 Conventions, the Supplementary Fund Protocol in its existing form would apply in those States that chose to become parties to the Protocol. It was also noted that the second option would, in the sponsoring delegations’ view, require a more substantial change to the underlying Conventions, since the emphasis would shift from that of limits of liability under each Convention to one of quantum of claims falling first to the shipowner and then jointly to the shipowner and the 1992 Fund.

7.5 The Italian delegation introduced document 92FUND/WGR.19/11 in which it proposed a revision of the compensation regime so as to establish a more equitable balance amongst all States Parties to the Conventions with regard to the payment of compensation, thereby ensuring that the system remained politically sustainable. The Working Group noted that the specific proposals by the Italian delegation were to raise the liability limit of the shipowner under the 1992 Civil Liability Convention and to establish an additional tier of compensation which would be funded by individual cargo owners (as opposed to oil receivers) as identified by a particular cargo’s bill of lading. It was noted that the financial contribution of the cargo owner should, in the Italian delegation’s view, be covered by financial guarantees or insurance

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with limits equivalent to at least the ceiling established in respect of shipowners' liabilities.

7.6 The Working Group noted the information contained in document 92FUND/WGR.3/19/3 submitted by the Oil Companies Marine Forum (OCIMF), which provided the historical background leading to the 1969, 1971, 1984 and 1992 Diplomatic Conferences through which the existing liability and compensation regime had evolved. It was noted that the document focused on the main objectives of the Conferences, the concerns that were raised by delegations at the time and how these had led to compromises in adopting the final texts of the Conventions.

7.7 In introducing its second document (document 92FUND/WGR.3/19/4) the OCIMF observer delegation explained the basis of its proposal, which was intended to ensure that two primary objectives were fulfilled, namely to provide prompt and proper compensation to those suffering pollution damage from oil spills and to provide an incentive for a reduction in the occurrence of oil spills by creating a mechanism for encouraging improvements in maritime safety. It was noted that the OCIMF delegation had expressed the view that, since spills from small vessels could be as expensive as spills from large vessels, it was illogical and inappropriate to have a sliding scale for the shipowners' liability, and it therefore proposed a fixed limit of liability under the 1992 Civil Liability Convention which would apply to all tankers irrespective of their size or capacity. It was also noted that the OCIMF delegation had proposed that in order to avoid any adverse effects on small ships in some States, a provision similar to that in the HNS Convention could be introduced into the Civil Liability Convention whereby States could exempt tankers under a certain gross tonnage that were engaged only in domestic coastal trade from the application of the Convention, which could be covered by specific national requirements for such tankers.

7.8 The Working Group noted two specific options proposed by OCIMF. The first option envisaged a revision of the 1992 Civil Liability Convention introducing a flat limit of liability of 90 million SDR for all ships irrespective of size and a revision of the Supplementary Fund Protocol with contributions to the Supplementary Fund being shared between shipowners and oil receivers on a percentage basis to be determined. The second option envisaged a revision of the 1992 Civil Liability Convention increasing the limit of liability to around 200 million SDR for all ships irrespective of size and a revision of the 1992 Fund Convention introducing a corresponding increase in the Fund limit.

7.9 In introducing document 92FUND/WGR.3/19/9 the observer delegation of the International Group of P&I Clubs stated that, whilst the cost study referred to in section 6 would undoubtedly provide interesting background information, in that delegation's view, both shipowners and cargo interests had contributed roughly comparable amounts over the period of the study, and that the conclusions of the study should therefore not of themselves determine the position of the Working Group on outstanding issues, including sharing the burden. The delegation further stated that whilst the claims history

suggested that the Supplementary Fund would rarely be called upon, the Clubs were prepared to explore other proposals for voluntary solutions instead of their original proposal to increase the limits for small ships (STOPIA), in order to address the impact of the Supplementary Fund on the concept of cost sharing if that issue was of concern to States and the oil industry, since the Clubs considered that voluntary industry solutions on sharing could obviate the need to amend the Conventions and thereby avoid the legal and practical problems that would ensue.

7.10 The observer delegations of the International Chamber of Shipping (ICS) and the International Association of Independent Tanker Owners (INTERTANKO) introduced document 92FUND/WGR.3/19/13. Those delegations expressed the view that the increases in the level of compensation available under the 1992 Civil Liability and Fund Conventions which had entered into force in 2003 had addressed any inadequacies and that any concerns about the impact of the Supplementary Fund on the concept of equitable sharing of the costs of compensation between shipowners and cargo interests should be addressed through voluntary industry solutions. Those delegations urged the Working Group to defer further consideration of the issue until the results of the Director's study on the costs of spills and the industry's proposals to address equitable sharing were available.

7.11 The Chairman noted that the Working Group had to consider six options which in principle were as follows:

- 1) the traditional revision of the limits in the 1992 Civil Liability Convention by increasing the small ship minimum and the steepness of the slope of the SDR/tonnage line for larger ships (Australia *et al.*);
- 2) the sharing of the liability under the present Civil Liability Convention between shipowners and oil receivers (Australia *et al.*);
- 3) raising the limit of liability of the shipowner under the Civil Liability Convention and the introduction of a third tier cargo liability (Italy);
- 4) increase in the limits under the 1992 Civil Liability Convention and the 1992 Fund Convention (OCIMF);
- 5) increase of the shipowners' liability to a flat amount, independent of the ship's tonnage, and/or a sharing of the contributions to the Supplementary Fund between the shipowner and the oil receivers (OCIMF).
- 6) adjustment of the sharing of the financial burden between shipowners and cargo interests by means of voluntary solutions (International Group of P&I Clubs)

7.12 A number of delegations expressed the view that, whilst the Supplementary Fund had the potential for creating an imbalance if that Fund was called upon to pay compensation, this did not justify a revision of the 1992 Conventions, which could, in their view, endanger the whole compensation system. Those delegations considered that the most appropriate solution would be for the shipping and oil industries to reach an agreement on how to address the imbalance through self-regulation by means of voluntary solutions.

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7.13 Other delegations expressed the opposite view and stated that one of the conditions that had been agreed when the Supplementary Fund Protocol was adopted was that the 1992 Civil Liability Convention should be revised. Those delegations noted that the original basis of the 1971 Fund Convention had been to ensure that there was adequate compensation available beyond what was realistically insurable at that time, but that now that adequate insurance cover was available to shipowners, the emphasis should be on equitable sharing. Those delegations believed that whilst the voluntary industry proposals were commendable and could play a useful role during any transitional period before widespread ratification of revised Conventions, the treaty law problems were not insuperable and did not justify maintaining the *status quo*.

7.14 Several delegations emphasised that the main purpose of the international compensation regime was to ensure prompt and adequate compensation to victims. They expressed the view that the regime had in general worked well and that one reason was its relative simplicity. It was maintained that it was important therefore to ensure that any changes did not hamper the functioning of the regime to the detriment of victims.

7.15 Several delegations considered it inappropriate to rely permanently on voluntary solutions, since in their view, liability and compensation for oil pollution damage gave rise to important questions of civil law that fell within the field of public policy, which had to be addressed by legislation. It was also pointed out that not all ships transporting persistent oil as cargo were entered in P&I Clubs belonging to the International Group.

7.16 The observer delegation of the International Group of P&I Clubs stated that the proposal under consideration by the shipping and oil industries whereby the two industries would contribute to the Supplementary Fund were not seen by the P&I Clubs as an interim solution pending revision of the 1992 Conventions, nor did they consider them akin to the voluntary schemes of TOVALOP and CRISTAL which had applied worldwide. That delegation stated that the shipowners' participation in the third tier of compensation would have legal standing in as much as future charter party agreements would ensure that shipowners contributed to the compensation paid under the Supplementary Fund Protocol.

7.17 A number of delegations stated that they considered the proposals by Australia *et al* worthy of further consideration, but expressed the view that the proposal by Italy might create problems of jurisdiction bearing in mind that cargoes frequently changed ownership during a voyage from a loading terminal to their final destination. Some delegations stated that whilst they did not favour a voluntary system based on industry self-regulation, they were not yet in a position to decide on the best approach as regards revising the Conventions pending the outcome of the costs study to be undertaken by the Director.

7.18 Some delegations expressed interest in the Italian proposal which in their view merited further consideration.

7.19 In summing up the debate the Chairman noted that whilst there was strong support for maintaining a simple and workable international compensation regime, the Working Group was divided on whether or not to amend the provisions relating to the shipowners' liability, which was at the heart of any decision to revise the regime. He pointed out that the present regime had in general worked well and had made it possible to settle a very high percentage of all claims without litigation and that problems had mostly been encountered in relation to a few large incidents where the total amount of compensation had been insufficient to pay all claimants in full. He made the point that it was nevertheless essential from time to time to step back and examine how the system was working and whether there was a need to update the regime. He stressed the importance of continuing to work towards a consensus, since it would be very regrettable and to the detriment of victims of oil pollution damage if some States decided to opt out of the system to pursue their own solutions. He further stated that the Working Group had had for consideration a large number of options and that it was important to try and reduce the options to two, which could be considered by the Working Group. He also stated that if a revision were to take place, it would be necessary to integrate these options into one workable proposal, which could be put forward to a future Diplomatic Conference. He stated that whilst there was some support for voluntary schemes, some scepticism had also been expressed about relying on such schemes as a permanent solution. The Chairman considered that besides the question of whether to adopt voluntary or legal arrangements there were other issues and concerns regarding the Conventions that could only be addressed through their revision.

7.20 In conclusion the Chairman stated that he believed that the debate had created sufficient momentum to keep the question of shipowners' liability under review for the next meeting of the Working Group in May 2004 when, hopefully, the results of the Director's study of the costs of oil spills would be available. He urged delegations to continue informal discussions in the meantime in order to achieve consensus, with a view to consolidating the various options or developing clear proposals regarding voluntary schemes.

Substandard transportation of oil and the right of the shipowner to limit liability

7.21 In introducing document 92FUND/WGR.3/19/7 the delegations of Canada and the United Kingdom stated that any review of the compensation regime should address the need to minimise the risk of pollution incidents without penalising well maintained vessels and responsible owners or detracting from the regime's main objective of ensuring prompt compensation to victims of oil pollution damage. Those delegations referred to the study of the international maritime insurance system being carried out by the Maritime Transport Committee of the Organisation for Economic Co-operation and Development (OECD) to establish whether, without prejudice to potential victims, it was feasible to remove insurance cover for substandard shipping, while still maintaining the necessary risk spreading coverage for the rest of

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the industry. The point was made that the outcome of the OECD study had a direct bearing on the work of the Working Group in so far as the operation of substandard tankers was likely to give rise to, or pose a risk of, claims for compensation under the 1992 Civil Liability and Fund Conventions and the Supplementary Fund Protocol. Those delegations stated that the compensation regime was never intended to provide a means of underwriting the consequences of incidents involving substandard tankers and that it would be unacceptable if the high levels of financial protection now available were to act as a safety net for failures to invest in ship safety and maintenance or to comply with international standards.

7.22 The sponsoring delegations proposed exploring how to introduce cost disincentives to deter substandard shipping whilst at the same time ensuring that operators of well-maintained tankers were not competitively disadvantaged. The point was made that whilst Port State Control inspections had resulted in the banning of substandard ships in some regions, their continuing operation in other parts of the world meant that pollution incidents would still occur, thus exposing the 1992 Fund to further calls to meet compensation payments. Those delegations called on the P&I Clubs to be more transparent as regards their practices in monitoring safety and management standards of ships and what disincentives, if any, were in place to deter substandard shipping. The sponsoring delegations proposed that in the light of the outcome of the OECD study which was expected to be finalised by April 2004, the Working Group should give consideration to introducing into the compensation Conventions a formula by which the level of liability of shipowners could be automatically increased in the case of an incident involving a substandard tanker, thereby penalising low operating and maintenance standards and reducing any unjust financial burden on contributors to the 1992 Fund.

7.23 The French delegation introduced document 92FUND/WGR.3/19/8, which called for a review of the shipowner's right to limit liability and the role of the insurer in cases where the ship was in poor condition. The point was made that the existing compensation Conventions acted contrary to the other Conventions adopted by the International Maritime Organization in that far from encouraging the use of safe, quality shipping, they made it possible, by limiting liability of the shipowner, to restrict the financial risk involved in using substandard vessels. The French delegation recalled that previous discussions in the Working Group had established that there was no consensus in favour of a return to the provisions in the 1969 Civil Liability Convention that determined when a shipowner should be deprived the right to limit liability, or of extending the right of action against the charterer in the case of negligence. The French delegation therefore proposed that the Conventions be amended in such a way that the cost of pollution damage was borne by those using substandard ships, without imposing any additional burden on shipowners who promoted quality shipping, whilst at the same time ensuring the prompt compensation of victims. The French delegation noted that under the current regime the insurer had the right to revoke insurance cover in the

event that the shipowner was not entitled to limit his liability. That delegation proposed two amendments to the liability regime, firstly that an exception should be made to a shipowner's right of limitation when the damage appeared to result from the structural condition of the ship and secondly that in such circumstances the insurer should continue to provide the necessary cover. The French delegation expressed the view that its proposal in respect of breaking a shipowner's right to limit liability was consistent with Article V.2 of the 1992 Civil Liability Convention. That delegation also proposed that the 1992 Fund should systematically take recourse actions against charterers following incidents caused by ships with structural defects.

7.24 The Japanese delegation introduced document 92FUND/WGR.3/19/12/Rev.1 which set out specific proposals for cases involving the Supplementary Fund whereby shipowners would bear some additional financial burden beyond the current limits under the 1992 Civil Liability Convention, which would contribute to promoting quality shipping and thereby reduce the risk of pollution damage. That delegation proposed that if an incident caused by a substandard ship were to result in compensation being paid by the Supplementary Fund, the owner of that ship should bear an additional liability to that under the 1992 Civil Liability Convention, either on the basis of a fixed amount or as a percentage of the compensation paid by the Supplementary Fund, whichever was the lower. The Japanese delegation proposed that the 1992 Civil Liability Convention be amended so as to impose this additional liability on the owners of ships registered or chartered by a receiver in a Contracting State of the Supplementary Fund Protocol. That delegation further proposed that in addition to increasing the liability of shipowners, receivers of oil after carriage in a substandard ship in a State where an incident occurred should make additional contributions to the Supplementary Fund, firstly for an amount equal to the shipowner's additional liability or the shipowner's liability in total and secondly for an amount calculated on the basis of the receivers share of oil received and against the net balance of compensation from the Supplementary Fund. The Japanese delegation proposed that in order to avoid difficulties in defining a 'substandard ship' or delays in paying compensation pending the establishment of whether or not a particular ship was substandard, all ships over a certain age, except those which were double-hulled or certified as CAP level 1 or 2, would be regarded as substandard for the purpose of imposing an increased financial burden on the shipowner and the oil receiver chartering the vessel.

7.25 The Working Group noted the proposal by OCIMF in paragraph 5.1 of document 92FUND/WGR.3/19/4 to amend the test of a shipowner's right to limit liability, for example by reverting to the 'fault or privity' test in the 1969 Civil Liability Convention, so as to ensure that the limit could be broken in cases where there was a demonstrable failure by the shipowner. It was noted that OCIMF further proposed that to avoid delays in compensation payments in cases where there was a dispute between a particular shipowner and the 1992 Fund on the issue of liability, the Fund should continue to pay compensation pending resolution of the dispute.

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7.26 The observer delegation of the International Group of P&I Clubs introduced document 92FUND/WGR.3/19/10, which set out the measures taken by the Clubs in relation to substandard ships. The Working Group also took note of the information contained in document 92FUND/WGR.3/19/15, which described the specific measures taken to this effect by one P&I Club. The delegation of the International Group stated that one of the difficulties that the Clubs experienced was that information on ship inspections, such as those carried out by members of OCIMF, was, for legal reasons, confidential. That delegation stated that the Clubs were obtaining legal advice on the sharing of information on ship inspections and were also proposing the establishment of high level, joint industry group, which could include representatives of IMO and the IOPC Funds, to explore ways of developing a transparent system of improving ship standards. The point was made, however, that the Clubs could not be expected to police ship standards.

7.27 The Working Group noted the reasons set out in document 92FUND/WGR.3/19/9 submitted by the International Group of P&I Clubs as to why the Clubs opposed any amendment to the provisions relating to a shipowner's right to limit liability. It was noted that the Clubs considered that any weakening of a shipowner's right in this regard would result in the oil industry rarely contributing to the cost of compensation for pollution damage, which States might find politically unacceptable. It was also noted that the Clubs considered that the compensation system should not be used to punish the substandard operator, bearing in mind that shipowners with poor claims records already paid more by way of premium and that exposure to large claims fell randomly on all shipowners and should therefore be shared by the whole ship-owning community.

7.28 The Working Group noted the information contained in document 92FUND/WGR.19/13 submitted by the observer delegations of ICS and INTERTANKO. It was noted that, according to ICS and INTERTANKO, particularly damaging cargoes would in future only be carried in double hulled tankers, that single hulled tankers were being phased out at an accelerated pace and that tanker owners had invested some US\$100 billion in double hulled tankers since the early nineties. It was further noted that in the view of those delegations, it was measures such as those above that influenced the quality of shipping services rather than changes in the liability regime and that it was inappropriate to lower the threshold for breaking a shipowner's right to limit liability as a means of trying to improve the overall quality of shipping, which was best dealt with through other international conventions.

7.29 A number of delegations stated that whilst they fully supported measures to eliminate substandard ships they doubted that the compensation Conventions were the appropriate instruments to bring about improvements in standards. They also pointed out that there were already regulations pertaining to eliminating substandard ships and that any definition of the term 'substandard' that was incorporated into the liability Conventions would become out of date by the time any new treaty came into force. The point was also made that if regulations adopted by IMO enabled older ships to continue

to trade, it made no sense to increase the financial burden on the owners of such vessels.

7.30 Other delegations expressed the view that greater levels of liability for compensation would inevitably lead to enhanced responsibility on the part of shipowners, which would in turn lead to a reduction in the number of pollution incidents. The point was made that whilst many States had made considerable efforts to eliminate substandard tankers, the widespread ratification of the compensation Conventions meant that the 1992 Fund's exposure would remain if these vessels simply moved to other parts of the world. The point was also made that if insurance continued to be available to substandard tankers the costs of pollution would continue to fall on the contributors to the Fund, and that it would be preferable for insurance to be withdrawn before an incident occurred rather than after the event.

7.31 A number of delegations expressed interest in the proposal by the French delegation referred to in paragraph 7.23 but considered that further clarification was required with regard to what was meant by 'standards laid down by international conventions' and how the condition of a particular vessel could be established after an incident. One delegation expressed the view that the proposal by the French delegation had merit if the burden of proof relating to the condition of the vessel was shifted from the claimant to the shipowner. Several delegations expressed concerns, however, in respect of the proposal that the exception should apply when the damage 'appeared to result' from the condition of the ship, since this would give rise to considerable uncertainty as to the scope of the exception. Some delegations doubted whether the exception from a shipowner's right to limit his liability proposed by the French delegation was in conformity with the current text of Article V.2 of the 1992 Civil Liability Convention and that any attempt to invoke such an exception could lead to different interpretations by national courts, thereby undermining the uniform application of the Convention.

7.32 Delegations representing the shipping and insurance industries pointed out that most major pollution incidents involved a degree of negligence even when the ships involved were of impeccable quality. Those delegations stated that it would be unrealistic for the insurers to cover unlimited liability in such cases.

7.33 In summing up the discussion the Chairman noted that some delegations had expressed a willingness to explore further the possibility of linking the issue of substandard transportation of oil within the legal framework of the compensation Conventions and an interest in the outcome of the study being carried out by OECD. He noted that other delegations remained sceptical about linking compensation with safety issues and had expressed the view that the complications that this would create could undermine what was a simple and effective regime, thereby slowing down compensation payments. He referred to the problems raised by the International Group of P&I Clubs relating to the sharing of information on ship inspections and suggested that Governments might be able to give assistance in this regard.

7.34 The Chairman stated that the documents presented needed reworking for the next meeting of the Working Group. He noted that there had been

considerable interest in the proposals by the French delegation and that that delegation had agreed to take the various points raised by delegations into consideration with a view to producing a revised text.

8 Definition of ‘ship’

8.1 The Working Group noted that the definition of ‘ship’ contained in Article I.1 of the 1992 Civil Liability Convention read as follows:

“Ship” means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.

Previous consideration

8.2 The 2nd intersessional Working Group, set up by the Assembly at its 3rd extraordinary session held in April/May 1998, had concluded that an unladen tanker fell within the definition of ‘ship’ under Article I.1 of the 1992 Civil Liability Convention during any voyage after the carriage of a cargo of persistent oil, but fell outside the definition if it was proved that it had no residues of such cargo onboard. This conclusion had been endorsed by the 1992 Fund Assembly at its 5th session in October 2000 (document 92FUND/A.5/28, paragraph 23.2).

8.3 During the discussions on the issue of unladen tankers at the 2nd intersessional Working Group it had been acknowledged that any final decision regarding the interpretation of the Conventions rested with the national courts in Contracting States and that the 1992 Fund Assembly had decided that any remaining ambiguity in the definition of ‘ship’ in the 1992 Conventions should be considered by the 3rd intersessional Working Group as part of its review of the adequacy of the international compensation system.

8.4 The Working Group recalled that at its fifth meeting the delegation of the United Kingdom had proposed a revision of the definition of ‘ship’ in Article I.1 of the 1992 Civil Liability Convention, in particular as regards the extent to which unladen tankers were covered by the Convention (cf document 92FUND/WGR.3/14/11).

8.5 The Working Group recalled that it had at its fifth session considered two possible options of amending the definition of ‘ship’ in the 1992 Civil Liability Convention to avoid ambiguity, namely

Option 1

To amend the 1992 Civil Liability Convention to the effect that:

- (a) a dedicated oil tanker (ie a tanker capable of carrying persistent oil and non-persistent oil) was always a ‘ship’ for the purpose of the 1992 Civil Liability Convention; and

- (b) that the proviso in the definition of 'ship' would apply only to vessels and craft capable of carrying oil, including non-persistent oil, and other cargoes.

Option 2

To remove the existing ambiguity by amending Article I.1 of the 1992 Civil Liability Convention which would result in a more effective application of the Fund's current policy.

8.6 It was recalled that the Working Group had accepted that the interpretation of the definition of 'ship' adopted by the Assembly could give rise to problems since the national courts might not accept this interpretation but that the 1992 Fund should maintain that policy as long as the 1992 Civil Liability Convention was not revised on this point. It was also agreed that if the Convention were to be revised, it would be appropriate to amend the definition of 'ship' so as to remove any ambiguity.

Consideration at the seventh meeting

8.7 The Working Group considered treaty texts for the two options referred to in paragraph 8.5 above which had been submitted by the delegations of Australia *et al* as set out in section 2 of document 92FUND/WGR.3/19/2 as follows.

Option 1

'Ship' means:

- a) any sea-going vessel and seaborne craft of any type whatsoever which is constructed or adapted for the carriage of persistent or non-persistent oil in bulk as cargo; and
- b) any sea-going vessel and seaborne craft of any type whatsoever which is actually carrying persistent oil in bulk as cargo or which is on any voyage following such carriage unless it is proved that it has no residues of such cargo of persistent oil in bulk aboard

Option 2

~~'Ship' means any sea going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of actually carrying oil and other cargoes shall be regarded as a ship only when it is carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such cargo of oil in bulk aboard.~~

8.8 A number of delegations favoured option 2 on the grounds that the compensation Conventions related solely to incidents involving ships engaged in the transportation of oil. The point was made that if option 1 were to be adopted, incidents involving spills of bunker fuel from chemical tankers would be covered by the Conventions, which had never been the intention when the Conventions were drafted. The point was also made that option 1

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would extend the cover of the Conventions to storage tankers, which would be in contradiction of the policy decision taken by the 1992 Fund Assembly.

8.9 A number of delegations favoured option 1, although some of those delegations considered that the definition as drafted in document 92FUND/WGR.3/19/2 was misleading in that it was not clear whether paragraphs a) and b) were intended to be cumulative or mutually exclusive.

8.10 Some delegations were not convinced of the need to amend the definition of 'ship'.

8.11 In his summing up of the discussion the Chairman said that whilst there appeared to be a preference for option 1, further discussion was required with a view to reaching a consensus on the appropriate scope of cover of the Conventions, which should be tied to the transportation of oil, following which a suitable definition could be drafted.

9 Tacit amendment procedures

9.1 The Working Group recalled that at its fifth meeting it had considered a proposal by the United Kingdom delegation (document 92FUND/WGR.3/14/13) to amend the tacit amendment procedure in the 1992 Conventions so as to allow an automatic revision of the Conventions' limits in accordance with a suitable formula that would trigger any increase. It was recalled that the United Kingdom delegation had argued that the time periods in the current tacit amendment procedures were too long from the point of view of maintaining realistic levels of compensation and also from the point of view of contributors to the Fund, who had a preference for regular, modest - rather than large, infrequent increases in the limits.

9.2 The Working Group considered the amendment to the tacit amendment procedures proposed by the delegations of Australia *et al* set out in section 3 of document 92FUND/WGR.3/19/2, which envisaged an automatic revision of the limits on a more regular basis along similar lines to the tacit amendment procedure contained in the 1999 Montreal Convention for the Unification of Certain Rules for International Carriage by Air under which the limits of liability were reviewed at five-year intervals. It was noted that reviews under that Convention were made by reference to an inflation factor based on the average annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the SDR, namely US dollar, pound sterling, Japanese yen and euro. It was further noted that any revision became effective six months after States Parties had been notified thereof unless a majority of States had registered their disapproval within three months after the notification.

9.3 The Working Group also considered a proposal by the delegations of Australia *et al* set out in section 4 of document 92FUND/WGR.3/19/2 that the tacit amendment procedures should be used also to address other issues, such as the introduction of administrative changes which could improve or solve problems relating to the operation of the 1992 Fund. It was noted that the sponsoring delegations had considered that the scope for adopting such

procedures should be limited to those Articles of the 1992 Fund Convention that dealt with essentially technical matters, eg Article 18 (Functions of the Assembly), Article 20 (Quorum) and Article 29 (Functions of the Director).

9.4 There was considerable support for the proposal to amend the procedures for increasing the limits under the Convention so as to bring about more modest changes with shorter intervals so that the limits could be adjusted in line with inflation and to protect shipowners and contributors to the Fund from infrequent but large increases. Some delegations favoured the approach used in the 1999 Montreal Convention in that it stipulated how the limits should be revised, thus avoiding the need for political decisions. Other delegations preferred to follow the same procedure as the one in Article 24 of the Supplementary Fund Protocol, which was modelled on Article 33 of the final clauses in the 1992 Fund Convention but with considerably shorter time periods for the various steps leading to such increases.

9.5 In his summing up the Chairman concluded that there was general support for the proposal that the tacit amendment procedure should be amended so as to allow more frequent but modest increases in the limits and that the Montreal Convention might provide an appropriate model for a more automatic system.

9.6 A number of delegations stated that whilst the proposal to introduce tacit amendment procedures in respect of administrative matters was worthy of further consideration, caution was required to ensure that any changes in this regard were consistent with international law. The point was made that the tacit amendment procedure had been developed as an innovative way of ensuring that the effects of inflation on costs and advances in technological development could be accommodated in international treaties. It was pointed out that the extension of the tacit amendment procedure to administrative matters could affect the constitution of the Funds. Some delegations considered that any widening of the scope of tacit amendment procedures could result in adverse changes in relationships between Member States.

9.7 Some delegations referred to the specific problem already faced by the 1992 Fund's governing bodies in trying to achieve a quorum, which was likely to become increasingly acute as more States joined the Fund. Those delegations considered that there was a need to balance the desirability of the governing bodies maintaining their truly international nature and at the same time ensure that they were not paralysed due to the lack of a quorum. One delegation suggested that the tacit amendment procedure was not the appropriate way of dealing with the quorum because the changes might not be timely enough to keep pace with the growing membership of the Fund. That delegation suggested that the specific problem regarding a quorum required its own solution.

9.8 In his summing up the Chairman stated that Articles 18 and 29 related to constitutional features of the 1992 Fund Convention and that there appeared to be unease within the Working Group of applying tacit amendment procedures to them. He noted, however, that the issue of a quorum (Article 20) was a serious one, particularly if the lack of a quorum were to ever prevent the

Fund from dealing with a major pollution incident, and that this issue therefore needed further consideration in order to find a lasting solution.

10 Refinement of the contribution system

10.1 The Working Group took note of the information contained in document 92FUND/WGR.3/19/5 submitted by the Netherlands delegation and document 92FUND/WGR.3/19/16 presented by the observer delegation of the Federation of European Tank Storage Associations (FETSA) which called for a refinement of the 1992 Fund's contribution system to take into account the particular problem faced by oil storage companies who had no interest in the oil received, other than providing temporary storage, but had difficulties in charging their principals for any post-event levy and therefore had to pay contributions to the 1992 Fund out of their own pockets.

10.2 It was suggested by these delegations that the problems faced by independent storage companies might get worse with the adoption of the Supplementary Fund Protocol due to the greatly enhanced levies that could be required for that Fund. The Working Group noted that the Netherlands delegation proposed incorporating into a revised version of the 1992 Fund Convention two provisions contained in the 1996 HNS Convention, one relating to the concept of 'receiver' and the other relating to the definition of 'contributing oil'. The Working Group noted that the Netherlands delegation had submitted concrete proposals for changes to Article 1 of the 1992 Fund Convention to this effect.

10.3 It was noted that the first Netherlands proposal would give the storage companies, under certain conditions, the possibility to pass the levy to their principals, provided that these were located in a State Party to the Fund Convention. It was also noted that the second proposal would result in oil which was transferred directly, or through a port or terminal, from one ship to another, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination being considered as contributing oil only in respect of receipt at the final destination.

10.4 The Working Group noted the information provided by FETSA regarding the changes that had taken place in the tank storage industry, in particular the nature of its client base, which was now focused on large, globally operating principals. It was noted that according to the Netherlands delegation and FETSA a rearrangement of the funding as proposed by the Netherlands delegation would not affect the volume of contributing cargo received or the levying of contributions to the 1992 Fund.

10.5 It was recalled that the issue of refinement of the contribution system had been discussed previously within the IOPC Funds, most recently by the Working Group at its fifth meeting (document 92FUND/A/ES.7/6, section 8).

10.6 Due to lack of time the proposal by the Netherlands delegation was not discussed. It was agreed therefore that this issue should be considered as a matter of priority at the next session of the Working Group.

11 Future work

11.1 The Working Group noted that, due to lack of time, it had not been possible to address the following matters which had been addressed in documents presented to the present meeting, in particular:

- (a) refinement of the contribution system (documents 92FUND/WGR.3/19/5 and 92FUND/WGR.3/19/16);
- (b) submission of oil reports and payment of contributions (document 92FUND/WGR.3/19/2, section 5);
- (c) compulsory insurance for ships carrying less than 2 000 tonnes of oil in bulk as cargo (document 92FUND/WGR.3/19/2, section 6);
- (d) merger of the Civil Liability Convention and the Fund Convention into one single Convention (document 92FUND/WGR.3/19/2, section 7);
- (e) deletion of the six year time bar period in the 1992 Conventions (document 92FUND/WGR.3/19/6);
- (f) minimum entrance fee to the Fund (document 92FUND/WGR.3/19/11, section 3.2).

11.2 The Working Group agreed with the Chairman's proposal that consideration of these matters should be deferred to the next meeting of the Working Group, which was planned for the week of 24 May 2004, and that priority should be given to their consideration at that meeting.

11.3 The Chairman noted that the results of two relevant studies were expected to have been made available by the date of the next meeting, ie that by the Director on the costs of oil spills and that by an OECD Working Group on substandard shipping.

11.4 The Chairman indicated that in his view there were three areas which should be actively explored by delegations before the next meeting, ie:

- (a) issues relating to the total compensation package, where delegations should work together to reduce the current options from six to two and to propose appropriate treaty texts;
- (b) possible amendments to the 1992 Conventions intended to deter substandard oil transportation, where delegations should explore the possibilities further with the aim of proposing treaty texts, subject to any proposals not being to the detriment of claimants; and
- (c) proposals for voluntary schemes on sharing of costs of oil spills, which might include proposals relating to substandard oil transportation.

11.5 The Chairman noted that the first two issues were primarily issues for government delegations to pursue whilst the third was primarily a matter for industry delegations.

11.6 The Working Group agreed with the Chairman's proposal that the agenda for the next meeting should include the following issues:

- (a) the outstanding issues listed in paragraph 11.1;
- (b) more precise proposals, preferably in the form of treaty texts, relating

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to the total compensation package, indicating how any revised regime would operate in relation to the existing regime under the 1992 Conventions;

- (c) concrete proposals, in the form of treaty texts, on the issue of substandard shipping;
- (d) proposals by industry delegations for voluntary schemes to address issues relating to the sharing of costs of oil spills and substandard oil transportation.

11.7 The Chairman made the point that a large proportion of the documents presented to this meeting of the Working Group had been submitted after the three-week deadline which had been fixed by the Assembly at its October 2002 session and that, in order to enable delegations to prepare for the meetings and for the discussions to be productive, it was essential that documents were received in time to enable the Secretariat to distribute them in all the working languages of the 1992 Fund.

11.8 A number of delegations expressed the view that the authors of documents should ensure that they abide by the deadline for the submission of documents. However, it was recognised that, although the goal should be to present treaty texts, this might not be possible in view of the short interval between the February and May 2004 meetings.

11.9 It was noted that it was the Director's intention to convene sessions of the 1992 Fund Executive Committee and the 1971 Fund Administrative Council during week of 24 May 2004 to consider incident-related issues, as well as an extraordinary session of the 1992 Fund Assembly to deal with the preparations for the entry into force of the 2003 Supplementary Fund Protocol.

11.10 Some delegations stated that sufficient time should be allocated during the meeting week in May 2004 for the meeting of the Working Group. These delegations noted that, as a result of the consideration of urgent issues relating to incidents, the time allocated to the current meeting of the Working Group had had to be curtailed, so that it had not been possible to consider all the documents that had been submitted, and this had also occurred at previous meetings of the Working Group.

11.11 The question was raised as to whether it would be possible to have an additional meeting of the Working Group later in 2004. It was agreed that it would not be practicable to hold such a meeting before the summer and that there would be insufficient time available during the October 2004 sessions of the Funds' governing bodies. Depending on the date of entry into force of the Supplementary Fund Protocol, it was suggested that it might be possible to hold an additional meeting of the Working Group later in the year in conjunction with the first Assembly of the Supplementary Fund, which would have to be held within 30 days of the entry into force of the Protocol.

11.12 The question was also raised as to whether it would be possible for the Working Group to meet simultaneously and in parallel with the governing bodies. It was generally considered, however, that this would cause serious problems for a number of delegations.

Pollution of the Marine Environment

11.13 One delegation suggested that the Director should prepare a questionnaire to Governments and to observer delegations to identify which modifications to the 1992 Conventions were considered desirable, a procedure frequently used in other organisations. The Working Group considered, however, that this would not be practicable at this stage.

REVIEW OF THE INTERNATIONAL COMPENSATION REGIME UNIFORM APPLICATION OF THE CONVENTIONS

NOTE BY THE DIRECTOR

1 Introduction

The issue of uniform implementation of the Conventions was considered at the Working Group's second and third meetings (document 92FUND/A.6/4, section 25). At its third meeting the Working Group considered a document submitted by the Director (document 92FUND/WGR.3/8), in which he dealt with certain provisions in the Conventions in respect of which he felt that in the past the Conventions had not been applied in a uniform way or difficulties had arisen as a result of the relationship between the Conventions and national law, namely channelling of liability, time bar, enforcement of judgements, jurisdiction and distribution of the amounts available for compensation. These issues are dealt with in Sections 2 – 6 ¹.

2 Channelling of liability

2.1 The issue of channelling of liability is governed by Article III.4 of the 1969 Civil Liability Convention and the 1992 Civil Liability Convention, respectively. These provisions read:

Article III.4 of the 1969 Civil Liability Convention

No claim for compensation for pollution damage shall be made against the owner otherwise than in accordance with this Convention. No claim for pollution damage under this Convention or otherwise may be made against the servants or agents of the owner.

Article III.4 of the 1992 Civil Liability Convention

No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;

¹ Sections 2-5 of this document largely correspond to document 92FUND/WGR.3/8

- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
 - (e) any person taking preventive measures;
 - (f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e);
- unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2.2 In spite of these provisions in the 1969 Civil Liability Convention (Article III.4) prohibiting claims against the servants or agents of the shipowner, national courts have held the master personally liable for pollution damage. The courts arrived at this result because claims for compensation based on the Conventions were filed in criminal proceedings and since a person held criminally liable for a given event is automatically civilly liable for the same event. In one of these cases, the master, the shipowner's insurer and the 1971 Fund were held primarily liable whereas the registered owner was held subsidiarily liable, although it is clear from Article III.1 of the 1969 Civil Liability Convention that the shipowner is the person primarily liable. There is a risk that national courts may arrive at a similar result in respect of cases falling under the 1992 Civil Liability Convention.

3 Time bar

3.1 The relevant provisions in the Conventions on time bar read:

Article VIII of the 1969 Civil Liability Convention and the 1992 Civil Liability Convention

Rights of compensation under this Convention shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage. Where this

incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence.

Article 6 of the 1971 Fund Convention and the 1992 Fund Convention

1. Rights to compensation under Article 4 *or indemnification under Article 5*² shall be extinguished unless an action is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage.

2. Notwithstanding paragraph 1, the right of the owner or his guarantor

² The words in italics do not appear in the 1992 Fund Convention.

to seek indemnification from the Fund pursuant to Article 5, paragraph 1, shall in no case be extinguished before the expiry of a period of six months as from the date on which the owner or his guarantor acquired knowledge of the bringing of an action against him under the Liability Convention³.

3.2 Some Fund Member States have not implemented in their national law the exact texts of the time bar provisions in the Conventions but have reworded the provisions in their national statutes, thereby changing their substantive contents. In addition, the courts in some States tend to interpret the time bar provisions in conjunction with provisions and principles on time bar in their national law. This problem is of particular importance in States where claims for compensation may be brought in both civil and criminal actions. In one Member State once a criminal action has been brought in respect of a particular event, the running of time bar periods is suspended until the criminal action has been brought to an end by a final judgement.

3.3 The main question is whether (as the Funds have maintained) the three-year time period from the date of the damage is absolute, or whether, as has been suggested in some Member States, the period can be extended or suspended through the application of general domestic law relating to time bar or prescription. There have also been different views expressed as to whether the three-year period can be interrupted by legal steps other than the bringing of an action for compensation or through notification in accordance with Article 7.6 of the Fund Conventions. It is important in the Director's view that the provisions on time-bar in the 1992 Conventions are applied in a uniform manner in all 1992 Fund Member States.

4 Enforcement of judgements against the 1992 Fund

4.1 The enforcement of judgements rendered by national courts against the Funds is governed by Article 8 of the 1971 and 1992 Fund Conventions respectively. Articles 4.5 and 18.7 are also relevant in this regard. These provisions read:

Article 4

5. Where the amount of established claims against the Fund exceeds the aggregate amount of compensation payable under paragraph 4, the amount available shall be distributed in such a manner that the proportion between any established claim and the amount of compensation actually recovered by the claimant under *the Liability Convention* and ⁴ this Convention shall be the same for all claimants.

³ This subparagraph does not appear in the 1992 Fund Convention.

⁴ The words in italics do not appear in the 1992 Fund Convention.

Article 8

Subject to any decision concerning the distribution referred to in Article 4, paragraph 5, any judgement given against the Fund by a court having jurisdiction in accordance with Article 7, paragraphs 1 and 3, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the 1992⁵ Liability Convention.

Article 18

The functions of the Assembly shall, *subject to the provisions of Article 26*⁶, be:

7. to approve settlements of claims against the Fund, to take decisions in respect of the distribution among claimants of the available amount of compensation in accordance with Article 4, paragraph 5, and to determine the terms and conditions according to which provisional payments in respect of claims shall be made with a view to ensuring that victims of pollution damage are compensated as promptly as possible;

4.2 In one case it became apparent that the national system for the enforcement of judgements had not been adapted so as to take into account the provisions of the 1971 and 1992 Fund Conventions referred to above. The national law does not contain any specific provision to the effect that the courts shall consider whether payments have to be pro rated or take into account decisions rendered by the competent Fund body in accordance with Article 4, paragraph 5 on pro rating. It was argued that the decisions by the national courts in respect of individual claims shall always be enforceable in full against the Fund, notwithstanding the provision in Article 8 ('subject to any decision concerning the distribution referred to in Article 4, paragraph 5'). This problem may arise also in other States, in particular in States where claims for compensation arising out of the same incident may be pursued in several courts, for example in both civil and criminal courts. If courts ignore the provisions on pro-rating this could result in claimants whose claims are approved by the courts shortly after an incident being paid in full, whereas claimants whose claims are approved later would not receive any payment since the total amount available for compensation has already been used.

5 Jurisdiction

An additional problem encountered by the IOPC Funds is that of jurisdiction. The Conventions only govern the distribution of jurisdiction between various States but do not deal with the competence of courts within the State where the pollution damage occurred. In some countries this may

⁵ The 1971 Fund Convention does not contain the expression '1992'.

⁶ The words in italics do not appear in the 1992 Fund Conventions.

result in several courts being competent to hear claims relating to the same incident. In one case litigation was pursued in five courts at various levels. It may be appropriate, therefore, for States to consider when implementing the Conventions whether it would be appropriate to provide in the national law that all claims falling under the Conventions arising from the same incident should be heard by the same court.

6 Distribution of the amounts available for compensation

Many States have not included in their national law provisions on the procedures to be applied for the distribution of the shipowner's limitation fund between claimants, which may give rise to problems. Similarly, many States have not included in their national law any provisions on the distribution of the amount payable by the 1992 Fund. This may cause difficulties for the courts if the amount available is insufficient to pay all claimants in full. This may in particular be the case if an incident causes pollution damage in more than one State. Also in that situation, Article 4 paragraph 5 of the 1992 Fund Convention should be respected. Should the 1992 Conventions be revised, it might be appropriate to consider inserting provisions dealing with these issues.

7 Previous consideration of these issues by the Working Group

7.1 At its third meeting the Working Group considered that uniformity of implementation and application of the Conventions was crucial to the equitable functioning of the international compensation regime and to equal treatment of claimants in various Fund Member States. It was recognised that States used different methods for implementing international treaties in their national legal system. It was noted that it was often not the implementation of the 1992 Conventions that was the problem but rather the application of the relevant provisions in the national statutes.

7.2 During the discussions at the Working Group's fourth meeting a number of delegations emphasised the importance of uniform application of the Conventions. It was recognised, however, that this was a difficult issue since national courts were sovereign in their interpretation of the Conventions, although they often lacked relevant experience. It was suggested that if more information were made available to Member States and national courts on decisions by the IOPC Funds' governing bodies relating to the criteria for admissibility of claims and on other aspects concerning the interpretation of the Conventions, this might contribute to a uniform interpretation. It was further suggested that it might be useful if the IOPC Funds could make available on their website a collection of decisions by national courts relating to the interpretation of the Conventions.

7.3 The Director mentioned that consideration was already being given to the creation of a database of important decisions by the Assemblies and Executive Committees relevant to the interpretation of the Conventions and

the admissibility of claims.

7.4 One delegation mentioned that IMO had elaborated an explanatory document entitled 'Unified Interpretation' which had been published together with the MARPOL 73/78 Convention and which had proven effective in achieving a high level of consistency in the application of that Convention by national administrations and courts. That delegation suggested that the 1992 Fund should develop along the same lines a formal explanatory document on the 1992 Conventions which would be published by the Fund together with the Conventions.

7.5 It was suggested by a number of delegations that consideration should be given to the adoption by the 1992 Fund Assembly of a Resolution on uniformity of interpretation and application of the Conventions.

7.6 In summing up the discussions the Chairman stated that there was general agreement that uniform interpretation and application of the 1992 Conventions was crucial for the functioning of the international compensation regime. He suggested that the IOPC Funds might consider including on their website information on decisions by national courts on the interpretation and application of the Conventions as well as on important decisions by the IOPC Funds' governing bodies in this regard. He also stated that the proposal to adopt a suitably-worded Assembly Resolution on this issue had received considerable support and should be considered further.

8 Director's considerations

8.1 In the Director's view uniform interpretation and application of the Conventions is crucial for a proper and equitable functioning of the international compensation regime. The Director recognises, however, that it is difficult to find a solution which would ensure uniformity. This is due to several factors, as discussed at the Working Group's previous meetings (cf paragraphs 6.1 and 6.2 above). It should also be noted that the difficulties encountered by national courts may differ dependent upon whether under the applicable legal system Conventions apply directly as part of national law (monistic system) or are implemented by means of a national statute (dualistic system).

8.2 One option which might be considered would be to make the provisions in the Conventions more precise, thereby reducing the scope for national courts to arrive at varying interpretations. This could be done by amending the provisions dealt with in paragraphs 2-6 above. Texts of possible amendments to some provisions to this effect are set out in the Annex. These provisions have been drafted purely for the purpose of illustrating the issues involved and do not constitute proposals by the Director for amendments to the Conventions.

8.3 It must be recognised, however, that it would be impossible to be so precise in the text of a Convention as to ensure uniformity in all cases. It is

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also impossible, when drafting provisions in Conventions, to foresee how these provisions would be implemented and applied in various Contracting States. Furthermore, it is often difficult to find a wording which would be given the same interpretation by courts with varying legal traditions.

8.4 In the Director's view it is important that States when implementing the Conventions in national law consider carefully how the provisions of the Conventions relate to other provisions in their domestic law, so as to prevent an application which in fact is at variance with the Conventions. It may be necessary to consider for example the relation between civil liability and criminal liability, or between the time bar provisions in the Conventions and other provisions or jurisprudence on time bar in national law.

8.5 When implementing Conventions special attention should, in the Director's view, be given to cases where pollution damage is caused in several Contracting States, in order to ensure a correct distribution of the shipowner's limitation fund and the amount payable by the 1992 Fund.

8.6 In this context attention is drawn to the Report of the 7th intersessional Working Group set up by the 1971 Fund Assembly. That Working Group took the view that national courts should, when making decisions on the interpretation of the definitions of 'pollution damage' and 'preventive measures', take into account the fact that these definitions were laid down in international treaties. It was argued by some delegations that the decisions taken by the IOPC Fund Assembly and Executive Committee should be considered as constituting agreements between the Parties to the Fund Convention on the interpretation of these definitions in accordance with Article 31.3(a) and (b) of the Vienna Convention on the Law of Treaties (document FUND/A.17/23, paragraph 7.1.4). The Working Group's report was endorsed by the 1971 Fund Assembly at its 17th session held in October 1994 (document FUND/A.17/35, paragraph 26.8).

8.7 One option which was mentioned during the discussions in the Working Group could be to insert a provision in the 1992 Fund Convention to the effect that national courts should take into account decisions by the 1992 Fund governing bodies on the interpretation of the 1992 Conventions. The question is, however, whether such a provision would be acceptable to the Member States.

8.8 At the 1992 Fund's Working Group's fourth meeting it was suggested that if more information were made available to Member States and national courts on decisions by the IOPC Funds' governing bodies this might contribute to a uniform interpretation. The Director believes that although information of this kind could contribute to uniform application in some cases, this would not address the basic problems. In fact, in several cases the national courts have been made aware of the positions taken by the Funds' governing bodies on a particular issue but have not attached any major importance thereto.

8.9 During the discussions in the Working Group, reference was made to an explanatory document entitled 'Uniform Interpretation' which had been published by IMO together with the MARPOL 73/78 Convention. However, the MARPOL 73/78 Convention largely deals with technical issues where such a document may make a significant contribution to a uniform application. The provisions in the 1992 Conventions deal with issues within the field of civil and procedural law, and a similar document would therefore not, in the Director's view, have the same impact on the interpretation of these Conventions.

8.10 The Director considers that a suitably worded formal 1992 Fund Assembly Resolution might be useful. Should a revision of the 1992 Conventions be carried out, it might be worth considering the adoption by the Diplomatic Conference of a Resolution on uniform interpretation and application of the revised Conventions. However, such Resolutions would in any event have only limited value, since the national courts are sovereign in the interpretation of Conventions.

9 Action requested

The Working Group is invited:

- a) to take note of the information contained in this document; and
- b) to give due consideration to the issues raised in the document in its recommendations to the Assembly.

* * *

ANNEX

**ILLUSTRATION OF POSSIBLE AMENDMENTS TO
CERTAIN PROVISIONS OF THE 1992
CONVENTIONS TO ENSURE UNIFORM INTERPRETATION AND
APPLICATION OF THE CONVENTIONS
(AMENDMENTS UNDERLINED)**

Article III.4 of the 1992 Civil Liability Convention

No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:

- (a) the servants or agents of the owner or the members of the crew;
- (b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
- (c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
- (d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
- (e) any person taking preventive measures;
- (f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e);

unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

These provisions apply whether the claim is brought in civil, criminal or administrative proceedings and independent of the type of court where the claim is brought.

Article VIII of the 1969 Civil Liability Convention and the 1992 Civil Liability Convention

Rights of compensation under this Convention shall be extinguished unless an action is brought thereunder within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage. Where this incident consists of a series of occurrences, the six years' period shall run from the date of the first such occurrence. These periods may not be suspended, interrupted or extended by the application of any other provisions or any principles in domestic law.

Article 6 of the 1992 Fund Convention

Rights to compensation under Article 4 shall be extinguished unless an action

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is brought thereunder or a notification has been made pursuant to Article 7, paragraph 6, within three years from the date when the damage occurred. However, in no case shall an action be brought after six years from the date of the incident which caused the damage. These periods may not be suspended, interrupted or extended by the application of any other provisions or any principles in domestic law.

Article 8 of the 1992 Fund Convention

Subject to any decision concerning the distribution referred to in Article 4, paragraph 5, any judgement given against the Fund by a court having jurisdiction in accordance with Article 7, paragraphs 1 and 3, shall, when it has become enforceable in the State of origin and is in that State no longer subject to ordinary forms of review, be recognized and enforceable in each Contracting State on the same conditions as are prescribed in Article X of the 1992 Liability Convention. When deciding on enforcement the Annex, Page 2 competent court shall respect any decision by the competent body of the Fund taken pursuant to Article 4, paragraph 7 that payments shall be limited to a specific proportion of the established claims.

RECORD OF DECISIONS OF THE FIRST SESSION OF THE ADMINISTRATIVE COUNCIL

ACTING ON BEHALF OF THE 7TH EXTRAORDINARY SESSION OF THE ASSEMBLY
(held on 8 and 9 May 2003)

Chairman: MR W OOSTERVEEN (Netherlands)

Opening of the session

0.1 It was noted that the Assembly's Chairman had attempted to open the 7th extraordinary session of the Assembly at 9.30 am on Thursday 8 May 2003 and again at 10 am that day, but that the Assembly had failed to achieve a quorum.

0.2 Only the following 38 1992 Fund Member States were present at that time whereas a quorum required 39 States present:

Algeria	France	Panama
Antigua and Barbuda	Germany	Philippines
Bahamas	Greece	Poland
Belgium	Ireland	Portugal
Cameroon	Italy	Republic of Korea
Canada	Japan	Russian Federation
China (Hong Kong	Latvia	Singapore
Special	Liberia	Spain
Administrative	Malta	Sweden
Region)	Marshall Islands	Tunisia
Cyprus	Mexico	United Arab Emirates
Denmark	Netherlands	United Kingdom
Dominica	Norway	Venezuela
Finland	Oman	

0.3 It was recalled that at its 7th session the Assembly had adopted 1992 Fund Resolution N°7 whereby, whenever the Assembly failed to achieve a quorum, the Administrative Council established under Resolution N°7 shall assume the functions of the Assembly, on the condition that, if the Assembly were to achieve a quorum at a later session, it would resume its functions.

0.4 In view of the fact that no quorum was achieved, the Chairman concluded the Assembly meeting.

0.5 In accordance with Resolution N°7, the items of the Assembly's agenda were therefore dealt with by the Administrative Council.

*Procedural matters***1. Adoption of the Agenda**

The Administrative Council adopted the Agenda as contained in document 92FUND/A/ES.7/1.

2. Election of the Chairman

The Administrative Council decided that the Chairman of the Assembly should *ex officio* be the Chairman of the Administrative Council.

3. Examination of credentials

3.1 The following Member States were present:

Algeria	Germany	Poland
Antigua and Barbuda	Greece	Portugal
Argentina	Grenada	Qatar
Bahamas	Ireland	Republic of Korea
Belgium	Italy	Russian Federation
Cameroon	Japan	Singapore
Canada	Kenya	Spain
China (Hong Kong	Latvia	Sri Lanka
Special	Liberia	Sweden
Administrative	Malta	Trinidad and Tobago
Region)	Marshall Islands	Tunisia
Colombia	Mexico	Turkey
Cyprus	Netherlands	United Arab Emirates
Denmark	Norway	United Kingdom
Dominica	Oman	Uruguay
Finland	Panama	Venezuela
France	Philippines	

The Administrative Council took note of the information given by the Director that all Member States participating had submitted credentials which were in order.

3.2 The following non-Member States were represented as observers:
States which have deposited instruments of ratification, acceptance, approval or accession to the 1992 Fund Convention:

Gabon	Ghana	Nigeria
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Other States

Chile	Iran, Islamic Republic of	Saudi Arabia
Ecuador	Peru	United States

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3.3 The following intergovernmental organisations and international non-governmental organisations were represented as observers:

Intergovernmental organisations:

International Oil Pollution Compensation Fund 1971

International non-governmental organisations:

Comité Maritime International

European Chemical Industry Council

Friends of the Earth International

International Association of Independent Tanker Owners (INTERTANKO)

International Tanker Owners Pollution Federation Ltd

Oil Companies International Marine Forum

4. Status of Conventions

The Administrative Council took note of the information in document 92FUND/A/ES.7/2 concerning the situation in respect of ratification of the 1992 Fund Convention. It was noted that there were at present 77 Member States of the 1992 Fund, that another 8 States had deposited instruments of accession to the Conventions and that the 1992 Fund would have 85 Member States by February 2004.

5. Levy of contributions

5.1 It was recalled that at its 20th session held in February 2003, the Executive Committee had invited the Director to convene an extraordinary session of the Assembly during the week of 6 May 2003 to consider whether contributions should be levied in respect of the *Prestige* incident, which had occurred off Spain on 13 November 2002, after the 2002 contributions had been decided by the Assembly at its 7th session, held in October 2002, for payment during the second half of 2003 to enable the 1992 Fund to make prompt payments of compensation (document 92FUND/EXC.20/7, paragraph 3.4.41).

5.2 It was noted that the Director had estimated that expenditure of some £35 million (both compensation payments and costs) might have to be paid before 1 March 2004 when the 2003 contributions to be decided by the Assembly at its October 2003 session would be due (document 92FUND/A/ES.7/3, paragraph 4.1.2).

5.3 The Administrative Council noted that the Executive Committee had on 7 May 2003, at its 21st session, considered the level of payments in respect of the *Prestige* incident and decided that the 1992 Fund's payments for the time being be limited to 15% of the actual loss or damage suffered by the respective claimants as assessed by the 1992 Fund's experts (document 92FUND/EXC.21/5, paragraph 3.2.31).

5.4 The Administrative Council noted that a Major Claims Fund would need to be established for the *Prestige* incident since the 1992 Fund's payments in

respect of that incident would exceed 4 million SDR payable from the General Fund. The Council considered the possible sources of funding for the *Prestige* Major Claims Fund set out in section 5 of document 92FUND/A/ES.7/3.

5.5 The Administrative Council recognised that it would be possible for a loan to be made to the *Prestige* Major Claims Fund from the General Fund. However, it was agreed that a loan of this type should be avoided where possible to ensure that funds were available from the General Fund to meet payments in respect of other new incidents and to avoid depleting the working capital.

5.6 It was recalled that all claims and expenses in respect of the *Nakhodka* incident had been paid and that the balance on the 1992 Fund *Nakhodka* Major Claims Fund at the end of April 2003 was approximately £37 million. It was noted that it would be possible for a significant loan to be made from that Major Claims Fund to the *Prestige* Major Claims Fund.

5.7 The Administrative Council noted that the balance on the *Erika* Major Claims Fund was approximately £83.6 million at 30 April 2003, that the monies on that Major Claims Fund would be used for payments of compensation and expenses in respect of the *Erika* incident although it was difficult to estimate the amount which would be paid from that Major Claims Fund up to 1 March 2004.

5.8 The Administrative Council noted that the Director had taken the view that the 1992 Fund should ensure that sufficient funds were available to allow prompt payments of compensation to be made for claims arising from the *Prestige* incident and to pay the expenses relating to the incident. It was also noted that, normally, contributions to the *Prestige* Major Claims Fund would be levied by the Assembly at its October 2003 session and that contributions would be received by 1 March 2004.

5.9 The Administrative Council noted that the Director had presented two options to finance payments in respect of the *Prestige* incident for consideration by the Council:

- (a) The *Prestige* Major Claims Fund could take loans from the 1992 Fund *Nakhodka* Major Claims Fund and to some extent from the General Fund; additionally, if the balance on the *Erika* Major Claims Fund were not used in its entirety for payments during the period, loans could be taken from that Major Claims Fund as well.
- (b) Contributions for £30 million could be levied to the *Prestige* Major Claims Fund for payment during the second half of 2003.

5.10 It was recalled that the governing bodies of the 1992 and 1971 Funds had in the past taken the view that further contributions should not be levied if and to the extent that liquid funds were available which could be used for compensation payments by means of loans from other Major Claims Funds or the General Fund, as provided in Financial Regulations 7.1 (c)(iv) and 7.2(d).

5.11 The Administrative Council noted the Director's view that, in light of the significant surplus on the 1992 Fund *Nakhodka* Major Claims Fund and in order not to burden contributors with an extra levy of contributions during

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2003, payments of compensation and expenses relating to the *Prestige* incident, over and above 4 million SDR payable from the General Fund, should for the period up to 1 March 2004 be financed by loans from the 1992 Fund *Nakhodka* Major Claims Fund and, if required, from the General Fund or the *Erika* Major Claims Fund.

5.12 A number of delegations supported the Director's proposal that payments in respect of the *Prestige* incident to be made before 1 March 2004 should be financed by loans from the *Nakhodka* Major Claims Fund, which would be in line with the past practice of the 1992 and 1971 Fund. Some delegations stated that they could accept either of the two options mentioned by the Director. Some other delegations suggested that it would be an advantage from the contributors' point of view if the payments of contributions in respect of a major incident were spread over a number of years.

5.13 The French delegation stated that as regards the *Erika* incident the French State would shortly submit its claim, that liquid funds had to be available to meet that claim, and that in view of the magnitude of that claim there would not remain any amount in the *Erika* Major Claims Fund.

5.14 In light of the significant surplus on the 1992 Fund *Nakhodka* Major Claims the Administrative Council decided, as proposed by the Director, that payments of compensation and expenses relating to the *Prestige* incident, over and above 4 million SDR payable from the General Fund, should for the period up to 1 March 2004 be financed by loans from the 1992 Fund *Nakhodka* Major Claims Fund and, if required and possible, from the General Fund or the *Erika* Major Claims Fund. It was noted that such loans would be repaid with interest in accordance with established practice.

6. Preparations for the entry into force of the HNS Convention

6.1 It was recalled that at its 7th session, held in October 2002, the Assembly had invited the Director to prepare a document on the administrative preparations for the setting up of the HNS Fund (document 92FUND/A.7/29, paragraph 28.6).

6.2 The Administrative Council took note of the information in document 92FUND/A/ES.7/4 which dealt with certain administrative aspects of the preparations for the entry into force of the HNS Convention. It also noted the preparations for the entry into force of the Convention carried out so far as set out in section 3 of that document.

6.3 It was noted that three States (Angola, Morocco and the Russian Federation) had acceded to the HNS Convention. It was also noted that at the 86th session of the Legal Committee of the International Maritime Organization, held during the week of 28 April 2003, a number of States had indicated the progress made towards ratification (IMO document LEG/86/1).

6.4 It was noted that the first Assembly of the HNS Fund would have to take decisions on a number of issues, *inter alia*:

- (a) Secretariat of the HNS Fund
- (b) Location of the HNS Fund's Headquarters
- (c) Financial issues
- (d) Handling of claims for compensation

6.5 It was further noted that the HNS Assembly would have to adopt several documents setting out the framework for the operation of the HNS Fund, for example:

- (a) Headquarters Agreement
- (b) Rules of Procedure for the Assembly and subsidiary bodies
- (c) Internal Regulations and Financial Regulations and, possibly, Staff Regulations and Staff Rules
- (d) Observer Status of intergovernmental and international non-governmental organisations

6.6 It was noted that the administrative arrangements would to a large extent depend on the location of the Secretariat of the HNS Fund. A number of delegations expressed the view that the most practical solution would be for the HNS Fund to have a joint secretariat with the IOPC Funds and to be based in London. The point was made that the use of a joint Secretariat would enable the HNS Fund to benefit from the experience gained by the IOPC Funds and would reduce the administrative costs for both the HNS Fund and the IOPC Funds. One delegation expressed the view that since the HNS Fund would have a different membership to the IOPC Funds, it should have a Secretariat separate to the IOPC Funds so as to ensure that there was a clear delineation of its operations and costs.

6.7 The Administrative Council recognised that the decision as to the location of the HNS Fund would be taken by the HNS Fund Assembly. However, the Council instructed the Director to continue the preparatory work for the time being on the assumption that the HNS Fund would have a joint Secretariat with the IOPC Funds and would be based in London. It was recognised that the HNS Fund would be a separate legal entity.

6.8 The Administrative Council accordingly instructed the Director to study the issues set out in paragraphs 6.4 and 6.5 further and submit draft texts for preliminary examination by the 1992 Fund Assembly at a future session. It was agreed that the forum where further discussion should take place would have to be considered at a later stage.

6.9 Several delegations stressed the importance of the preparatory work for the entry into force of the HNS Convention and recommended participation in a meeting to be held in Ottawa from 3 to 5 June 2003. It was also pointed out that useful information for States considering ratifying or acceding to the HNS Convention was available at a dedicated website (<http://folk.uio.no/erikro/WWW/HNS/hns.html>).

7. Claims relating to subsistence fishing

7.1 The Administrative Council recalled that at its February 1999 session the 1971 Fund Executive Committee had considered the question of claims in

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respect of subsistence fishing, ie fishing carried out by individual fishermen mainly for the purpose of providing food for their families. It was also recalled that the Committee had instructed the Director to study further the admissibility of claims relating to subsistence fishing, in consultation with the Fund's experts and the Food and Agriculture Organization (FAO), and to consider whether guidelines on the admissibility of such claims should be developed (document 71FUND/EXC.60/17, paragraph 5.6).

7.2 The Administrative Council noted that a key feature of claims for compensation in respect of small-scale fishing activities, including subsistence fishing, was that they were rarely supported by evidence as to normal levels of income against which to assess claims. It was also noted that in order to assist the 1992 Fund in dealing with such claims in the future the Director had engaged a firm of fishery specialists to prepare Technical Guidelines on methods of assessing losses in fisheries, aquaculture and processing sectors where evidence was likely to be limited or totally lacking.

7.3 The Administrative Council took note of the Table of Contents of the proposed Technical Guidelines set out in the Annex to document 92FUND/A/ES.7/5. It was noted that the Technical Guidelines were aimed primarily at the claims staff of the Funds' Secretariat and the shipowners' insurers as well as their experts working in the field and local claims office staff. It was further noted that the Guidelines were not intended to replace the Claims Manual, although like the Manual, the Guidelines had no legal standing.

7.4 A number of delegations welcomed the development of the Guidelines as a way of increasing transparency. It was also suggested that Guidelines could be developed in respect of other types of claims.

7.5 One delegation considered that, since the instruction to study this matter had been given by the 1971 Fund Executive Committee, any consideration of the Guidelines could only be done in conjunction with the 1971 Fund Administrative Council, and that the publication of the Guidelines would be going beyond the instructions given by that Committee. That delegation also considered that the 1992 Fund Administrative Council could not take a decision on the publication of the Guidelines since it had not seen the whole text of the Guidelines.

7.6 Another delegation considered that the Guidelines should be published by the authors without giving the impression that they had been approved by the IOPC Funds. That delegation also suggested that a more concise version could be produced, which would be useful for fishermen.

7.7 Another delegation suggested that the Guidelines could be published both on the IOPC Funds' website and on the FAO website.

7.8 A number of delegations considered that if the Guidelines were to be published as an IOPC Funds document, they should be examined by the Assembly. Other delegations considered that it would be preferable for the Guidelines to be published by the authors, with an introduction by the Fund making it clear that it was not a legal document. Several delegations agreed

with the suggestion that they could be published jointly by the Funds and the FAO.

7.9 An observer delegation pointed out that whilst the Guidelines would be useful for the purpose of quantifying damages, it was important not to lose sight of the fact that the burden remained on claimants to prove their losses. It was suggested that this be made clear in the introduction to the Guidelines.

7.10 The Director pointed out that the Guidelines had not been elaborated with the FAO, but that some of the information and models had been obtained from information published by the FAO. He stated that the proposed Guidelines would enable the 1992 Fund to use a wider network of fishery experts.

7.11 The Administrative Council instructed the Director to study the matter further and explore the ways in which the Guidelines could be published, as well as the possibilities of producing a more concise version.

8. Report of the third intersessional Working Group

8.1 The report of the third intersessional Working Group's fifth meeting, held in February 2003 (document 92FUND/A/ES.7/6), was introduced by the Group's Chairman, Mr Alfred Popp QC. In his introduction, he stressed that the coming meetings of the Working Group were of crucial importance in order for progress to be made on a number of important issues. He therefore urged delegations to make concrete written proposals well in advance of future meetings.

8.2 The Administrative Council took note of the Working Group's report and considered the text of a draft Resolution on the interpretation and application of the 1992 Conventions prepared by the Working Group as set out in the Annex to document 92FUND/A/ES.7/6.

8.3 Some delegations expressed hesitation about the draft Resolution because, in their view, it could be interpreted as an attempt to unduly influence courts. One delegation stated that it was for the Fund's legal representatives to make the case for a uniform application of the Conventions as part of the Fund's pleadings in respect of individual cases. In that delegation's view, the Fund should adopt more subtle ways of persuading jurisdictions to uphold the principles of uniform application of the Conventions, eg through participation in seminars and workshops.

8.4 Most delegations stated, however, that the aim of the Resolution was merely to encourage national courts to take into account the Fund decisions on the interpretation and application of the 1992 Conventions, recognising that the courts were the final authorities on such issues. Those delegations pointed out that the Resolution was to be adopted by States not by courts and that it was for the States to decide on the most appropriate way of using it.

8.5 It was pointed out that the word 'should' in the last paragraph of the English text of the draft Resolution had been incorrectly translated in the Spanish text. It was therefore agreed that the Spanish text should be amended so as to align it with the English and French texts.

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8.6 The Administrative Council approved the Resolution on the interpretation and application of the 1992 Civil Liability Convention and the 1992 Fund Convention (1992 Fund Resolution N°8), set out in the Annex.

8.7 It was recalled that the Working Group had decided to hold a short meeting during the week of 20 October 2003, in connection with the Assembly's 8th session, to consider the progress made as a result of ongoing informal discussions, as well as a more substantial meeting early in 2004.

9. Any other business Future sessions

It was recalled that the next session of IOPC Funds' meetings would be held during the week of 20 October 2003. It was decided that meetings would also be held during the weeks of 23 February 2004, 24 May 2004 and 18 October 2004.

10. Adoption of the Record of Decisions

The draft Record of Decisions of the Administrative Council, as contained in document 92FUND/AC.1/A/ES.7/WP.1, was adopted, subject to certain amendments.

ANNEX
Resolution n° 8
on the Interpretation and application of the
1992 Civil Liability Convention and the
1992 Fund Convention

The Administrative Council, acting on behalf of the Assembly of the International Oil Pollution Compensation Fund 1992, set up under the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (1992 Fund Convention),

Noting that the States Parties to the 1992 Fund Convention are also parties to the International Convention on Civil Liability for Oil Pollution Damage, 1992 (1992 Civil Liability Convention),

Recalling that the 1992 Conventions were adopted in order to create uniform international rules and procedures for determining questions of liability and providing adequate compensation in such cases,

Considering that it is crucial for the proper and equitable functioning of the regime established by these Conventions that they are implemented and applied uniformly in all States Parties,

Convinced of the importance that claimants for oil pollution damage are given equal treatment as regards compensation in all States Parties,

Mindful that, under Article 235, paragraph 3, of the United Nations Convention on the Law of the Sea 1982, States shall co-operate in the implementation of existing international law and the further development of international law relating to the liability for and assessment of damage caused by pollution of the marine environment,

Recognising that, under Article 31, paragraph 3, of the Vienna Convention on the Law of Treaties 1969, for the purpose of the interpretation of treaties there shall be taken into account any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions and any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation,

Drawing attention to the fact that the Assembly, the Executive Committee and the Administrative Council of the International Oil Pollution Compensation Fund 1992 (1992 Fund) and the governing bodies of its predecessor, the International Oil Pollution Compensation Fund 1971 (1971 Fund), composed of representatives of Governments of the States Parties to

Record of decisions of the First Session of the Administrative Council

the respective Conventions, have taken a number of important decisions on the interpretation of the 1992 Conventions and the preceding 1969 and 1971 Conventions and their application, which are published in the Records of Decisions of the sessions of these bodies¹, for the purpose of ensuring equal treatment of all those who claim compensation for oil pollution damage in States Parties,

Emphasising that it is vital that these decisions are given due consideration when the national courts in the States Parties take decisions on the interpretation and application of the 1992 Conventions,

Considers that the courts of the States Parties to the 1992 Conventions should take into account the decisions by the governing bodies of the 1992 Fund and the 1971 Fund relating to the interpretation and application of these Conventions.

¹ IOPC Funds' website: www.iopcfund.org

F. CRIMINAL ACTS ON THE HIGH SEA

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MEASURES TO PROTECT CREWS AND PASSENGERS AGAINST CRIMES COMMITTED ON VESSELS

SUBMITTED BY JAPAN

The M/V *Tajima* Case

1 On 7 April 2002, an incident occurred on board a Panamanian flag vessel, **M/V *Tajima***, crewed by Japanese and Philippine nationals. It was suspected that a Japanese officer was killed by Philippine seafarers on board the vessel while the ***Tajima*** was on the high seas.

2 On 12 April 2002, the ***Tajima***, with two suspects detained in custody by the captain, called at a Japanese port. Although the vessel was due to depart on 14 April 2002, the operating company, and others concerned, adjusted its schedule because of their concern about the safety of its navigation with two murder suspects on board. The vessel was compelled to remain anchored in the port until the suspects could be disembarked.

3 About a month later, on 14 May 2002, following an official request from the Government of the Republic of Panama, the Government of Japan detained the two suspects temporarily, in accordance with the Japanese Law of Extradition. On 15 May 2002 the vessel resumed its voyage.

4 Thus, for more than one month, the vessel was compelled to stay in the port and the captain was obliged to keep the two suspects in custody on the vessel. As a result, the stability and constancy of maritime transport were negatively affected. The incidents further caused great economic loss to the shipping company due to the suspension of operation of the vessel.

Legal aspects of the case

5 In the legal sense, this case was caused by the following situation, which also illustrates the disparity in the international community with regard to the establishment of criminal jurisdiction.

- (a) The flag State (Panama) had criminal jurisdiction over this case, but such jurisdiction was difficult to exercise.
- (b) Neither the State of nationality of the suspect nor the State of nationality of the victim had criminal jurisdiction with regard to the case under its own Penal Code. These States might have the same difficulty as the flag State in this case, if the commission of a crime took place far from their territory.
- (c) With regard to the coastal State (port State) UNCLOS does not seem to restrict the exercising of criminal jurisdiction over this kind of case, if the coastal State has national legislation that extends its

Measures to Protect Crews and Passengers against Crimes Committed on Vessels

jurisdiction with regard to the criminal acts concerned committed outside its territory.

Document submitted by Japan to the eighty-sixth session of the Legal Committee

6 To prevent this kind of case happening, some internationally-agreed schemes are necessary. At the eighty-sixth session of the Legal Committee, Japan submitted a document (LEG 86/14/4) in order to ask the Committee to consider the following options:

Option 1: Establishment of a legal scheme

Based on the above, it would be advisable to establish a legal scheme to enable the captain of the vessel to act, at his discretion, in a similar way to an aircraft commander. In this case, a full discussion would be required, additionally, on what offences make the case for “delivery” or “disembarkation”, or to what degree the port State is put under obligation.

Option 2: Adoption of a resolution or other document

It may also be advisable to work out a recommendation to IMO Member States in the form of a resolution or some kind of document (guideline, handbook etc.) regarding co-operation between relevant States (e.g. the flag State, the State of nationality of the victim or suspect and the nearest coastal State) to facilitate a prompt solution.

Amendment of the Penal Code in Japan

7 Japan has amended its Penal Code in order to enable it to be applied to a foreign offender, where murder or other serious crime is committed against a Japanese national outside Japanese territory. One possible solution could therefore be to invite Member States to establish criminal jurisdiction over this kind of case by amending their Penal Codes, especially in State-related cases (e.g. as the flag State, as the State of nationality of seafarers and passengers and as the coastal State).

Action requested of the Legal Committee

8 The results of ongoing studies undertaken by CMI and IMO are expected to be presented at the next session. Every Member State is invited to recall the origin of this topic and to consider both the legal implications for similar cases, and what solutions can be found.

RESOLUTION CONCERNING CRIMINAL OFFENCES ON BOARD FOREIGN FLAG SHIPS

BE IT RESOLVED BY THE 38TH INTERNATIONAL CONFERENCE OF THE COMITÉ MARITIME INTERNATIONAL, MEETING IN VANCOUVER, BC, CANADA, ON 4TH JUNE 2004, AS FOLLOWS:

The Conference's Committee on Criminal Offences committed on board Foreign-Flagged Ships having considered the responses to the Questionnaire on this subject circulated jointly by the CMI and the International Maritime Organization to the members of both organizations together with submissions to and Reports of the IMO Legal Committee on this subject from its 86th through 88th Sessions, and having examined the issues in detail at its 38th International Conference in Vancouver, BC, together with various means of dealing with the problem,

THE CONFERENCE recommends to the Assembly that the Comité establish a Joint International Working Group to draft a model national law concerning such offences and that, upon approval of the text of such model national law by the Assembly, it be promulgated to the national Member Associations of the CMI with the request that the model law be reviewed and adapted by them and presented to their respective Governments together with recommendations for its enactment.

II

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A. SPEECHES

SPEECH OF THE PRESIDENT OF THE CMI AT THE OPENING SESSION – MONDAY, MAY 31

Chief Justices, members of the Judiciary from around the world, Senator, distinguished guests, delegates from national maritime law associations, consultative members and observers, ladies and gentlemen – welcome to the 38th International Conference of the Comité Maritime International.

We appreciate the presence of so many of the international organisations with which the CMI works. I interpret this as recognition of the significance of the work which the CMI is doing. Also, importantly we have delegates from 42 National Maritime Law Associations. You are all most welcome.

When I opened our 37th International Conference in Singapore in 2001, I pointed out that of the 36 conferences held prior to 2001, only 5 had been held outside Europe. If you add Singapore and now Vancouver to that equation, I can at least claim that during my Presidency, with two conferences outside Europe, I have tried to redress the balance.

The Executive Council chose Vancouver for the 38th Conference for a number of excellent reasons. The Canadian MLA has always been a very active participant in the CMI. Past President of the CMLA, Barry Oland, has been a friend for more than 30 years (we shared an office at Ince & Co in the early 1970s); when I took office he felt at liberty to tell me what was wrong with the CMI from the stand point of the CMLA. I am grateful for that frankness. I don't think that the CMLA would have agreed to host this Conference in Vancouver unless its members felt that improvements had been made. Secondly, we knew that the Canadians would organise a good conference. They did a great job in Montreal in 1981 (my first CMI Conference) and I am sure they are all set to give us a great time this year.

In opening the Conference in Singapore, I suggested that over the past 30 years or so, the centre of gravity for the shipping industry had moved towards the Far East. Vancouver is, of course, well situated to benefit from that development. We are therefore pleased to welcome so many delegates from the Far East.

Last, but not least, Vancouver has itself to thank for its selection. I am sure that delegates who have been to Vancouver before are happy to be back here and those who have never been here before will come to understand why this City is such a great place to have a conference of this sort.

I have talked briefly about the organisations and individuals who are here for this conference, but I must just mention two sad gaps in the list of delegates. Ill health prevents my predecessor as President, Professor Allan Philip from attending this Conference. Professor Francesco Berlingieri was President of the

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CMI for a period of 16 years and retired from that post in 1992. Sadly, he is not able to be with us at this Conference – he is under doctor's orders not to take long haul flights but I can assure you that at 82 he is otherwise as full of energy and enthusiasm as ever. He has been the CMI publications officer since he retired as President. The fact that all delegates have a full set of papers for this Conference and have a copy of the Yearbook 2003 in their brief cases is all down to Francesco. Francesco, we wish that you were here with us and we also hope that you will be prepared to go on performing this essential publishing function for the CMI for a while yet. I think that I am right in saying that this is the first CMI International Conference which Francesco will have missed since he first attended in Naples in 1951. A quite astonishing attendance record.

On the subject of Conference documents, this is the first CMI Conference at which the documentation has been available on the internet proving that even a venerable institution like the CMI (107 years old) can adapt to changing times.

Talking of new technology. Look around the audience. Most of you remember the wonders of the telex machine. Some, like me, will remember telegrams and cables.

Just after the telex was introduced, late one evening, a lad from the general office delivered to me a telex for which he couldn't find a home. It read:

“Re your inquiry. We quote transport costs as follows: 1 horse \$600, 2 horses \$1,000, 3 horses \$1,400. Blood tests and veterinary certificates extra.”

Clearly misdirected.

I replied:

“Message received – believe not meant for us – we are shipping lawyers.”

Next day I received the following reply:

“How many lawyers are you shipping – how many blood tests needed...”.

I turn, briefly, to the work of this Conference. Nobody should come to a CMI Conference expecting a holiday. The mission statement of the CMI, drafted over 100 years ago, states that no maritime law shall be promulgated that does not have in-put from shipowners, merchants, underwriters, average adjusters, bankers and other persons interested in the maritime trades. The role of the lawyers, following this consultation process is “to discern what, among diverse solutions, is the best”. On many of the topics which we shall discuss this week, the consultation process has taken place and you will, indeed, be asked “to discern what among diverse solutions is the best”. Other topics will be new to you and on these the consultation process is only just beginning.

Whether you are here to contribute further to the fascinating debate on aspects of the CMI/UNCITRAL Transport Law Instrument or you are here to decide whether and how we should change the York-Antwerp Rules, we will expect to hear from you.

You will certainly be aware that the issue of Places of Refuge for ships in distress has become a major topic of discussion and debate at national and

Opening speech by Patrick Griggs

international level following such cases as the *Castor*, *Erika* and *Prestige*. The CMI has taken up this topic with enthusiasm and the whole of Thursday will be devoted to a detailed discussion of the practical and legal issues raised.

The CMI produced the first draft of the International Convention on Civil Liability for Oil Pollution Damage 1969 and has continued to take an active interest in developments in this field (the CMI guidelines on Oil Pollution 1994 are well respected and remain essential reading for those sorting out the aftermath of an oil spill). Those of you interested in this topic (and who would not be), will have the opportunity of listening to the latest thoughts on a possible revision of the liability and compensation regimes set up under CLC and Fund Conventions.

In these uncertain times post 9/11, everybody is very security conscious and ships are seen as a potential means for delivering a terrorist attack. On Tuesday and Wednesday, there will be sessions devoted to various aspects of maritime security.

Back in 1997, we were persuaded by Lord Mustill that the CMI was ideally placed to investigate certain features of the law of marine insurance which tend to create difficulties in all jurisdictions. We will be devoting two sessions to this topic and again, we hope that we will hear not only from those who have prepared papers and will put forward proposals, but also from interested delegates. On Thursday afternoon, there will be two short reporting sessions on the problems created by the bareboat chartering of vessels in the context of the obligation imposed by several conventions to purchase liability insurance before a ship may be allowed to operate and on the implementation of the 1989 Salvage Convention.

As ever, delegates will use such leisure time as we permit them, to seek out old friends and to make new ones so that the “family” traditions of the CMI can be perpetuated.

On a personal note: I shall be standing down from the Presidency at the Assembly meeting on Friday, June 4th. I shall make the most of my last 4? days in office but shall hand over to my successor on Friday with a mixture of relief and regret. Did I know what I was taking on back in June 1997. Answer No. Do I regret having taken on the job? Answer also no. I have thoroughly enjoyed my 7 years in charge and I like to think that I shall be handing over to my successor responsibility for an organisation which despite everything, is soundly based financially, has wide support from National Maritime Law Associations, has a busy and useful work programme and is, perhaps most importantly, respected and listened to by other international organisations whether they be non-governmental or inter-governmental. The reputation of the CMI is entirely dependent upon the quality of our work product and that quality can only be assured if our affiliated National Associations continue to support our efforts.

I hope that you all enjoy your week here and I look forward to meeting as many as possible of you either during the formal conference sessions or at the many social events which our Canadian hosts have organised for us.

**SPEECH OF THE PAST PRESIDENT,
PATRICK GRIGGS, AFTER THE ELECTION OF
JEAN-SERGE ROHART AS THE NEW
PRESIDENT OF THE CMI**

I hope you will excuse me if I interrupt the flow of the Assembly Meeting just to say a very few words.

Firstly, of course, congratulations to Jean-Serge on becoming President of the CMI. Unless I am very much mistaken, he is the first French President since 1911 when the late Paul Govare was in charge.

In those days the principle language of the CMI was French and English played a secondary role. I do not suggest that under Jean-Serge's Presidency, French will again become the dominant language, but I expect that much more of our business will be conducted in that elegant language whilst he's in charge.

A few thank yous. I have very much appreciated the support and advice of my two predecessors, Allan Philip and Francesco Berlingieri. At the outset it was a little daunting having these two elder statesmen at my elbow. However, I quickly learned that they were there when I needed them and did not try to influence the way in which I chose to run the CMI. Sadly, due to ill health, neither is here today. Francesco of course, continues (at 82) with his duties as Publications Officer.

I promise Jean-Serge that I will also keep a low profile.

We now seem to have a fairly settled administration. My thanks go to Pascale Sterckx who started out at the beginning of my term of office as secretary to the Administrator. When the Administrator resigned in order to enter politics in Antwerp, Pascale stepped up to become Assistant Administrator and she has been a huge help to me.

After one or two hiccups, I am delighted to be able to tell you that the financial affairs of the CMI are in the very capable hands of Benoît Goemans. He has been on a steep learning curve over the past year or two (he's a lawyer not an accountant with the usual lawyers' suspicion of figures). He has been assisted (and sometimes confused) by professional accountants. We now have a reliable accounts system in place and we can rely on Benoît to keep an eye on the day-to-day expenses and to produce, at the end of each year, a comprehensible set of accounts. In passing, I would express my gratitude to Senator David Angus. He has Chaired the Audit Committee which we created some years back to sort out the financial problems of the CMI. It will remain in existence and he will continue to act as Chairman.

In handing over the responsibilities to John-Serge, I am relieved to report that the CMI is, financially, on a sound footing.

I must also take this opportunity of thanking my old firm, Ince & Co, for

Closing speech by Patrick Griggs

providing me with an office and logistical support throughout the period of my Presidency. A special thanks to my secretary, Lesley Cannings, who has fitted my work in amongst all the other demands on her time. I am delighted that she is here today.

When I started my term of office, I was determined to engage the attention of a younger generation of lawyers and others to the voluntary work of the CMI. I have not been wholly successful. As my predecessors discovered, in the maritime world, whether you are a lawyer, a shipbroker or whatever, the first two decades of your career are spent establishing yourself. The third decade may see you in a position of responsibility and at the peak of your earning power. It may not be until the fourth decade of your career that you have time to devote to activities which are not directly fee earning. Working for the CMI is rewarding and interesting but it is voluntary and there is less and less scope for such pro bono work in the financial climate of the 21st Century. I am therefore resigned to the fact that much of the voluntary work of the CMI will continue to be done by those coming to the end of their careers. This may not be such a bad thing because it does mean we can call upon people with years of experience, a profundity of knowledge and time on their hands. However, I remain hopeful that some of the younger delegates here will push themselves forward to help with our projects.

Presidents need help and support. In looking for people to do jobs, I was fortunate in having many old friends to call upon from a generation which, at least in London, chose to retire early. At the risk of upsetting everyone else who has done good work for the CMI, I am going to mention two very old friends who have worked beyond the call of duty for the good of the CMI. Firstly, Stuart Beare who has, for the past 6 years, chaired the International Work Group and the International Sub-Committee on Transport Law. That this project has got as far as it has is almost entirely due to Stuart's determination and energy in driving it forward. I commend his work to my successor. The second person I would specifically mention is another old friend from London, Richard Shaw. One glance at the Conference Programme will reveal just how many CMI projects he is involved in as Rapporteur. I should also mention that he and I between us represent the CMI at meetings of the IMO Legal Committee and of the IOPC Fund and I hope that we may both be able to go on discharging that duty for the CMI for a few more years.

In all the CMI projects which have run during my Presidency. I have been fortunate to have enthusiastic support from Frank Wiswall, Karl Johan-Gombrii, Luis Cova Arria, Stuart Hetherington, Jose Maria Alcantara, Jean-Serge Rohart, Johanne Gauthier, Francesco Berlingieri, Gregory Timagenis, Professor John Hare, Bent Nielsen and Tom Remé to name but a few and to miss out, inevitably Rapporteur and other hard working members of International Working Groups and Sub-Committees. My thanks to all of you.

I am grateful also to the individuals who have served on the Executive Council during the 7 years of my Presidency. My particular thanks to Prof John Hare who, in the absence of our Secretary-General (Marko Pavliha) has taken over his duties on a temporary basis.

Thank you to Dr Alexander von Ziegler who was Secretary-General for

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most of my period of office until pressure of work obliged him to resign. His involvement in the Transport Law project has been vital and I am delighted that he will continue with this project at UNCITRAL as representative of the Swiss Government.

Talking of support the CMI should be thankful for the fact that I have a very understanding and supportive wife. Marian – thank you so much. She is not the first nor perhaps the last email widow.

A final and especially big thank you to the Officers and Members of our affiliated NMLAs. Literally, CMI would not exist without your support both in providing the funds to keep us going and in contributing to the work on our projects.

Jean-Serge, it's all yours – bon chance, mon ami!

B. TRANSPORT LAW

FINAL REPORT OF THE TRANSPORT LAW COMMITTEE

The Transport Law Committee met on Monday, 31 May, and Tuesday, 1 June, under the chairmanship of Alfred H.E. Popp, QC. In the limited time available, it was not possible to consider the whole of the current text of the Draft Instrument, which has been published by the United Nations Commission on International Trade Law (“UNCITRAL”) as U.N. document number A/CN.9/WG.III/WP.32 (“WP32”), and provisionally redrafted in part in U.N. document number A/CN.9/WG.III/WP.36 (“WP36”). The Committee accordingly discussed the six topics set out in the Agenda Paper circulated in advance of the meeting. The six topics, each focusing on a specific aspect of the Draft Instrument, were:

1. The Basis of the Carrier’s Liability – Article 14
2. Right of Control – Chapter 11
3. Jurisdiction and Arbitration – Chapters 15 and 16
4. Delivery to the Consignee – Chapter 10
5. Transport Documents – Chapter 8
6. Rights of Suit – Chapter 13

In addition to the Agenda Paper, four Background Papers (one on each of the first four topics) were circulated in advance of the meeting.

The Basis of the Carrier’s Liability

The basis of the carrier’s liability in international maritime conventions has been a contentious subject for over eighty years. In the current negotiations, it has been accepted that the convention should provide for fault-based liability and should include some sort of list of “exceptions” along the lines of article 4(2) of the Hague and Hague-Visby Rules, despite observations from some civil-law countries that the list is unnecessary and that the same result could be accomplished more elegantly with a general statement.

It has been more difficult to resolve whether the items on the list should be treated as “presumptions” or as “exonerations.” In WP32, this issue was handled by including three variants of article 14, each with a slightly different treatment. During the discussion of this subject at the October 2003 UNCITRAL session in Vienna, it was suggested that the so-called “exoneration” approach was substantially the same as the so-called

“presumption” approach because in practice the carrier would still lose the benefit of an article 4(2) “exoneration” if the cargo claimant could show that the carrier’s fault had contributed to the loss. It was accordingly suggested that article 14 might be redrafted to focus on the practical requirements for establishing carrier liability, describing what each party needed to prove and the circumstances under which proof was required, thus avoiding the problems associated with either a “presumption” or an “exoneration” approach. During breaks at the UNCITRAL session, therefore, some delegates attempted to redraft article 14 along these lines. Their preliminary efforts are reflected in WP36.

During the Committee’s initial discussion of this topic, most delegations supported the general approach taken in article 14 of WP36 but agreed that the drafting could be improved. On the view that the CMI’s expertise might be valuable to the UNCITRAL Working Group in making suggestions for drafting improvements, a small group was appointed to study the text and suggest ways in which the concepts of article 14 might be expressed more clearly. Brian McGovern, SC, of Ireland chaired this small group, which also included representatives of Japan, Nigeria, Switzerland, and the United Kingdom.

The small group prepared a revised draft of article 14 (annex 1, *infra*), explaining that it had adhered to the extent possible to the UNCITRAL Working Group’s policy decisions in producing the WP36 draft and had attempted only to embody those decisions in clearer language. More specifically, the revised draft did not depart from a fault-based liability regime that incorporates both the customary exceptions and the customary shifting of the burden of proof.

The small group made certain substantive assumptions in suggesting its revisions to article 14, and noted that its draft would need to be amended if these assumptions were incorrect. Most significantly, in dealing with paragraph 4 of the WP36 draft (paragraph 5 of the small group’s revised draft), the small group did not provide for the situation in which two co-operating causes produce the same loss. The small group instead assumed that this paragraph had been intended to address the situation in which some part of the damage is due to a different cause for which the carrier is not responsible. In dealing with the question of seaworthiness (in paragraph 3), the small group assumed that the claimant would have the burden to prove that the loss, damage, or delay was caused by unseaworthiness, and not simply the fact of unseaworthiness or that the unseaworthiness could have been a cause of the loss.

With these substantive assumptions in mind, the small group had a few specific comments about its work in proposing revisions to the draft. In paragraph 1, it retained the wording of the WP36 draft with two exceptions. It deleted the words “and to the extent” (based on its assumption that paragraph 4 of the WP36 draft was not intended to cover two co-operating causes producing the same loss, see *supra*) and it deleted the brackets around “or contributed to” (because those words were thought to be in line with the policy decisions that the UNCITRAL Working Group has already taken). As regards the list of exceptions, the small group omitted sub-paragraph (j) of the WP36 version (corresponding to article 4(2)(q) of the Hague and Hague-Visby Rules) because it covers the same ground as paragraph 1. Finally, the

small group concluded that the policy of WP36 could best be implemented by using words of presumption in paragraph 2 to express the situation in which the carrier has brought itself within one of the sub-paragraphs of the catalogue with the result that the burden of proof shifts to the claimant to prove that the carrier is nevertheless liable for the loss, damage, or delay.

The Committee thanked the small group for its hard work in producing a revised text of article 14 for the consideration of the UNCITRAL delegates, and concluded that it expressed the intent of the WP36 draft in clearer language. Some delegations nevertheless expressed concerns that they felt the UNCITRAL delegates would need to consider in revising the language of article 14. First, it was questioned whether the small group had been correct to assume that paragraph 4 of the WP36 draft had not been intended to cover two co-operating causes producing the same loss. Second, it was questioned whether the revised draft adequately expressed the conclusion that a carrier could escape liability under paragraph 1 by proving that it had satisfied its due diligence obligation when unseaworthiness was the sole cause of the loss.

The Committee noted that the small group had proposed alternative drafts for its paragraph 5. Although somewhat more support was expressed for alternative 2 than for alternative 1, the Committee agreed that both alternatives should be included in the proposed revision.

The Committee concluded that the text of the proposed revision of article 14 should be included in the report, and made available to the UNCITRAL delegates for whatever help it might provide in their work.

Right of Control

The need sometimes arises to vary the instructions that have been given to a carrier regarding the goods. Similarly, the carrier sometimes requires additional instructions regarding the goods. In either situation, questions arise: Who has the right to vary the instructions? From whom should the carrier seek additional instructions? Can the right to give instructions be transferred? If so, to whom, when, and how? What is the scope for which instructions can be given? What if the new instructions result in additional costs? The Hague, Hague-Visby, and Hamburg Rules do not address these questions specifically, although it is understood that a carrier may modify the contract of carriage by agreement with the holder of all of the copies of the bill of lading. Conventions governing other modes of transport (e.g., CMR, COTIF, Warsaw) do address the subject.

The Draft Instrument proposes to treat this subject for the first time in a maritime convention. Doing so will be particularly important for electronic commerce. By codifying much of the current jurisprudence governing holders of bills of lading, the Draft Instrument provides rules that can be applied in the absence of physical documents. The UNCITRAL Working Group has found the provisions on this subject to be generally acceptable, but there are two variants of paragraph 1 of article 55.

After discussion, the Committee concluded that a chapter addressing the Right of Control was needed in the Draft Instrument, but that article 55 as

drafted was not fully satisfactory. It may not adequately protect the carrier, and it may expose the carrier to the risk of conflicting instructions.

Jurisdiction and Arbitration

Visby Rules do not address questions of jurisdiction or arbitration, but the issue is addressed in the Hamburg Rules and in non-maritime conventions such as CMR. The CMI Draft Instrument had not included provisions on this subject, but the International Sub-Committee on Uniformity had fully discussed both aspects and had made some recommendations for modifying the Hamburg Rules' treatment of the issue.

During the first reading of the Draft Instrument, the UNCITRAL Working Group expressed support for the inclusion of provisions to address jurisdiction and arbitration along the lines of the Hamburg Rules. The Secretariat accordingly included draft provisions in WP32 based directly on the Hamburg Rules, and a variant based on suggestions made by the CMI International Sub-Committee on Uniformity.

The Committee was invited to address eight specific questions (contained in the Agenda Paper). The first five questions related to jurisdiction; the last three related to arbitration.

In the first question, the Committee was invited to consider whether the Draft Instrument should contain jurisdiction rules, or whether the subject was better left to national law. The virtually unanimous conclusion (shared by every national member association to speak on the question) was in favor of including jurisdiction rules in the Draft Instrument.

In the second question, the Committee was invited to consider the type of jurisdiction rules that should be included. The Committee was almost unanimous in agreeing that the parties should be permitted to choose one or more additional fora as alternatives to the fora named in the Draft Instrument, but that the parties should not be permitted to choose a forum prior to the loss that would exclude the fora named in the Draft Instrument. The Committee recognized that the considerations differed after the loss had occurred, and endorsed the proposed article 75 bis in variant A of WP32 (corresponding to article 75 in variant B of WP32), which permits the parties to agree on an exclusive forum after a claim has arisen.

The Committee was closely divided on whether the permissible fora must be located in a country that has ratified the Instrument, with a slight majority favoring the view that this should not be necessary. In conjunction with this question, the Committee also considered whether it was appropriate to permit an action to be instituted in the place in which a vessel was arrested, as permitted under article 73 (variant A or variant B) of WP32. Although a minority view was expressed in favor of leaving this question to be determined under the Arrest Convention, a majority supported article 73 (with several delegations noting that the Arrest Convention was not in force in their countries).

During this discussion, four drafting suggestions were made that the UNCITRAL delegates may wish to consider. First, several delegations

suggested adding the ports of loading and discharge to article 72(c) (variant A or variant B), although one delegation disagreed with this suggestion. Second, some delegations suggested that the word “plaintiff” in article 72 should be replaced with a term such as “cargo claimant” to clarify that the carrier could not defeat the cargo claimant’s choice of forum by bringing a declaratory judgment action or seeking an anti-suit injunction. One delegation agreed with this suggestion only in part, arguing that the carrier should have its choice among the permissible fora when it was a “genuine” plaintiff (e.g., seeking to enforce one of the shipper’s obligations), although not when it was seeking a declaratory judgment or an anti-suit injunction. Third, one delegation noted that chapter 15’s application (if any) to performing parties would require careful consideration. Fourth, one delegation suggested that it would be appropriate to add language addressing the time-bar problem in article 75 (variant A).

The Committee was virtually unanimous that the Draft Instrument should not contain *lis pendens* rules (such as article 75, variant A), or rules of any sort on the recognition and enforcement of judgments.

Turning to the arbitration questions, the Committee agreed that the Draft Instrument should contain some provision addressing arbitration, although views varied widely on what such a provision might say. Some delegations argued that the Draft Instrument should address arbitration only to confirm that the option was freely available if the parties included a valid arbitration clause in their contract, others argued that the Draft Instrument should control arbitration along the same lines as the Hamburg Rules (and thus article 78, variant A), and others took various positions between these extremes. There was no support for the view that the seat of the arbitration must be in a convention country, although there was substantial support for the view that the arbitrators must be bound to apply the terms of the Instrument.

A strong majority of the Committee supported some level of regulation of arbitration under the Draft Instrument, perhaps along the lines of article 77 (variant A or variant B), but at least to prevent the possibility of arbitration from circumventing the Draft Instrument’s jurisdiction rules in certain circumstances. A minority would leave the regulation of arbitration entirely to national law.

Delivery to the Consignee

Chapter 10 contains material that does not appear in other transport conventions, but it is intended to deal with two important practical problems that arise regularly: the situation in which the consignee does not claim the cargo, and the situation in which the person claiming delivery does not have a bill of lading to surrender. The principal question for the Committee to consider was whether article 49 strikes a fair balance in seeking to resolve the problems.

After discussion, the Committee concluded that chapter 10 was generally acceptable in principle, but had a few questions or drafting suggestions. Several delegations suggested that it would be helpful to specify

what is meant in article 46 by a consignee's "exercis[ing] any of its rights under the contract of carriage." There was some discussion as to whether article 49 would increase the risk of fraud.

Transport Documents

The UNCITRAL Working Group gave brief treatment to this subject during its first reading of the Draft Instrument, and thus chapter 8 is still substantially the same as it was in the CMI Draft Instrument. There are nevertheless some differences. The Committee was invited to focus on (1) the addition of the words "as furnished by the shipper before the carrier or a performing party receives the goods" in article 34.1(c)(i); (2) the provisions in article 37 permitting a carrier to qualify the information furnished by the shipper with respect to goods in a closed container; and (3) the choice between the two variants of article 39(b)(ii).

The Committee concluded that the addition of the words "as furnished by the shipper before the carrier or a performing party receives the goods" in article 34.1(c)(i) does not impose an unreasonable burden on the shipper.

The Committee was evenly divided on article 37. Some delegations found the provision to be satisfactory as drafted. Others thought that article 37(b) could be read to be unfair to the carrier in the situation in which the carrier has no idea whether the goods in a closed container conform to the shipper's description of them.

Those delegations addressing the choice between the two variants of article 39(b)(ii) preferred to retain variant A.

Right of Suit

Article 63 of WP32 seeks to define the parties that might be entitled to bring an action under the contract against a carrier for cargo damage. Variant A, following the CMI Draft Instrument, specifies the precise categories of potential claimants. Variant B, prepared by the UNCITRAL Secretariat at the request of the Working Group, defines the parties that might be entitled to bring an action more broadly.

A majority of the Committee favored the complete elimination of article 63 in either variant, thus leaving the issue to national law. No delegation spoke in favor of variant A, but some delegations gave qualified support to variant B subject to redrafting. For example, it would be necessary to clarify what is meant by "legitimate."

ANNEX 1**Article 14. Basis of liability**

1. The carrier shall be liable for loss resulting from loss of or damage to the goods, as well as from delay in delivery, if the [claimant] proves that

- (a) The loss, damage, or delay; or
- (b) The occurrence that caused or contributed to the loss, damage, or delay took place during the period of the carrier's responsibility as defined in chapter 3, unless the carrier proves that neither its fault nor the fault of any person mentioned in Article 14 bis¹ caused or contributed to the loss, damage, or delay.

2. Notwithstanding paragraph 1 above, if the carrier proves that the loss, damage, or delay was caused by one or more of the following events:

- (a) [Act of God], war, hostilities, armed conflict, piracy, terrorism, riots and civil commotions;
- (b) Quarantine restrictions; interferences by or impediments created by governments, public authorities, rulers, or people [including interference by or pursuant to legal process];
- (c) Act or omission of the shipper, the controlling party, or the consignee;
- (d) Strikes, lockouts, stoppages, or restraints of labour;
- (e) Wastage in bulk or weight or any other loss or damage arising from inherent quality, defect, or vice of the goods;
- (f) Insufficiency or defective condition of packing or marking;
- (g) Latent defects in the ship not discoverable by due diligence;
- (h) Handling, loading, stowage, or unloading of the goods by or on behalf of the shipper, the controlling party, or the consignee;
- (i) Acts of the carrier or a performing party in pursuance of the powers conferred by articles 12 and 13(2) when the goods have become a danger to persons, property, or the environment, or have been sacrificed

it shall be presumed that the loss, damage, or delay was not caused by the fault of the carrier or by the fault of any person mentioned in Article 14 bis.

3. The presumption referred to in paragraph 2 above shall not apply if the claimant proves either that the fault of the carrier or of a person mentioned in Article 14 bis caused or contributed to the loss damage or delay or that the loss damage or delay was caused or contributed to by:

- (i) the unseaworthiness of the ship; or
- (ii) the improper manning, equipping, and supplying of the ship; or
- (iii) the fact that the holds or other parts of the ship in which the goods were carried (including containers, when supplied by the carrier, in or upon

¹ This is a reference to article 15(3) of WP32, which the UNCITRAL Working Group agreed should become a separate article provisionally numbered 14 bis. See paragraph 167 of the report of the twelfth session (Vienna, October 2003), A/CN.9/544, and the discussion of article 15(3) summarized in paragraphs 166-170.

which the goods were carried) were not fit or safe for their reception, carriage, or preservation.

4. Provided that in the event that the claimant proves that the loss damage or delay was caused or contributed to by any of the factors set out in (i), (ii), or (iii) of paragraph 3, the carrier shall be liable for the loss damage or delay unless the carrier proves that it complied with its obligation to exercise due diligence as required by Article 13(1).

5. [Alternative 1] When part of the loss damage or delay is due to a cause for which the carrier is liable under the preceding paragraphs of this article and part is due to a cause for which it is not liable, the carrier is liable only for such part as is attributable to its fault provided that it proves the amount of the loss damage or delay not attributable thereto.

[Alternative 2] When part of the loss damage or delay is due to a cause for which the carrier is liable under the preceding paragraphs of this article and part is due to a cause for which it is not liable, the carrier is liable only for such part as is attributable to its fault and the court shall apportion liability on that basis. [The court may apportion liability on an equal basis only if it is unable to determine the actual apportionment or if it determines that the actual apportionment is on an equal basis.]

C. GENERAL AVERAGE

THE YORK - ANTWERP RULES 2004

The Comité Maritime International at its conference held in Vancouver 31 May-4 June 2004 has completed a revision of the York-Antwerp Rules 1994 and approved a new text to be referred to as York-Antwerp Rules 2004. These new rules are set out below.

The CMI will publish a printed version of the new rules. In summary the amendments made are the following:

Rule VI. Salvage remuneration

has been amended to exclude the allowance of salvage from G.A., except in cases where one party to the salvage has paid all or any of the proportion of salvage due from another party.

Rule XI. Expenses at port of refuge

has been amended to exclude the allowance in G.A. of wages and maintenance of master, officers and crew while the vessel is detained at a port of refuge.

Rule XIV. Temporary repairs

A second sentence has been added to Rule IV b), the effect of which is that recovery in G.A. of the cost of temporary repairs of accidental damage at a port of refuge is limited to the amount by which the estimated cost of the permanent repairs at the port of refuge exceeds the sum of the temporary repairs plus the permanent repairs actually carried out. This capping of the amount allowed as temporary repairs has sometimes been referred to as the “Baily” method.

Rule XX. Provision of funds

has been amended to abolish commission on G.A. disbursements.

Rule XXI. Interest of losses

has been amended to the effect that the Interest charged is no longer a fixed rate, but a rate that will be fixed each year by the Assembly of the CMI. The CMI will publish this on its website www.comitemaritime.org.

The Plenary Session of the Vancouver Conference adopted the following guidelines for fixing the rate of interest:

“Guidelines for the Assembly of the Comité Maritime International

General Average

when deciding the annual interest rate provided for in YAR Rule XXI. The Assembly is empowered to decide the rate of interest based upon any information or consideration, which in the discretion of the Assembly are considered relevant, but may take the following matters into account: The rate shall be based upon a reasonable estimate of what is the rate of interest charged by a first class commercial bank to a ship owner of good credit rating .

Due regard shall be had to the following:

- That the majority of all G.A. adjustments are drawn up in USD.
- That therefore the level of interest for one-year USD loans shall be given particular consideration.
- That most adjustments, which are not drawn up in USD, are drawn up in GBP, EUR or JPY.
- That, if the level of interest for one year loans in GBP, EUR or JPY differs substantially from the level of interest for one year loans in USD, this shall be taken into account.
- That readily available information about the level of interest such as USD – prime rate and LIBOR shall be collected and used.
- Any amendment of these guidelines shall be made by a decision of a conference of the CMI.”

Rule XXIII. Time bar.

A new rule has been added Into the YAR 2004 providing for any rights to G.A. contribution to be time-barred after a period of one year after the date of the G.A. adjustment or six years after the date of termination of the common maritime adventure whichever comes first. The rule recognizes that its provisions may be invalid in some countries.

Tidying up the text of the yar

Interchangeable terms have been standardized such as “admitted in”, “allowed in” and “admitted as” now all become “allowed as”. Some terms have been modernized and a consistent numbering of paragraphs has been introduced.

The Plenary Session of the Vancouver Conference adopted the following resolution:

“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 1994;
- (2) propose that the new text be referred to as the York-Antwerp Rules 2004;
- (3) recommend that the York-Antwerp Rules 2004 should be applied in the adjustment of claims in General Average as soon as practicable after 31 December 2004.”

List of States:

Argentina	Japan
Australia and New Zealand	Malaysia
Belgium	Mexico
Brazil	Nigeria
Bulgaria	Norway
Canada	Peru
Chile	Philippines
China	Singapore
Colombia	South Africa
Denmark	Spain
Finland	Sweden
France	Switzerland
Germany	United Kingdom
Ireland	USA
Israel	Venezuela
Italy	

Copenhagen, 19 July 2004

BENT NIELSEN
*Chairman of the CMI International
Sub-Committee on G.A.*

THE YORK-ANTWERP RULES 2004

Rule of interpretation

In the adjustment of general average the following Rules shall apply to the exclusion of any Law and Practice inconsistent therewith. Except as provided by the Rule Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules.

Rule Paramount

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

Rule A

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

Rule B

- 1) There is a common maritime adventure when one or more vessels are towing or pushing another vessel or vessels, provided that they are all involved in commercial activities and not in a salvage operation. When measures are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.
- 2) 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

- 1) Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.
- 2) In no case shall there be any allowance in general average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure.
- 3) Demurrage, loss of market, and any loss or damage sustained or expense

RÈGLES D'YORK ET D'ANVERS, 2004

Règle d'interprétation

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'a pas été raisonnablement consenti.

Règle A

1) 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.

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

Règle B

1) 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.

2) 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 constitue lui-même un acte d'avarie commune, l'aventure maritime commune se poursuit.

Règle C

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

2) En aucun cas ne seront admis en avarie commune 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.

3) Les surestaries, les pertes de marché et toute perte ou dommage subi ou dépense encourue en raison de retard, soit au cours du voyage, soit

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

Rule D

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

Rule E

- 1) The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.
- 2) All parties 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.
- 3) 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

- 1) General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.
- 2) This rule shall not affect the determination of the place at which the average statement is to be made up.
- 3) When a ship is at any port or place in circumstances which would give rise to an allowance in general average under the provisions of Rules X and XI, and the cargo or part thereof is forwarded to destination by other means, rights and liabilities in general average shall, subject to cargo interests being notified if practicable, remain as nearly as possible the same as they would have been in the absence of such forwarding, as if the adventure had continued in the original ship for so long as justifiable under the contract of affreightment and the applicable law.

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

- 1) La preuve qu'une perte ou une dépense doit effectivement être admise en avarie commune incombe à celui qui réclame cette admission.
- 2) Les parties qui réclament une admission en 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.
- 3) 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 des 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

- 1) 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.
- 2) Cette règle est sans influence sur la détermination du lieu où le règlement doit être établi.
- 3) 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, 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 de transport et de la loi qui lui est applicable.

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4) 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 allowed as general average, unless such cargo is carried in accordance with the recognised custom of the trade.

Rule II. loss or damage by sacrifices for the common safety

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

Rule III. Extinguishing fire on shipboard

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

Rule IV. Cutting away wreck

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

Rule V. Voluntary stranding

When a ship is intentionally run on shore for the common safety, whether or not she might have been driven on shore, the consequent loss or damage to the property involved in the common maritime adventure shall be allowed in general average.

Rule VI. Salvage remuneration

a) Salvage payments, including interest thereon and legal fees associated with such payments, shall lie where they fall and shall not be allowed in general average, save only that if one party to the salvage shall have paid all or any of the proportion of salvage (including interest and legal fees) due from another party (calculated on the basis of salvaged values and not general average contributory values), the unpaid contribution to salvage due from that other party shall be credited in the adjustment to the party that has paid it, and debited to the party on whose behalf the payment was made.

b) Salvage payments referred to in paragraph (a) above 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

4) La part des admissions en avarie commune incombant à la cargaison, en application du 3ème paragraphe de la présente règle, n'excédera pas la dépense qu'auraient supportée les propriétaires de la cargaison si celle-ci avait été réexpédiée 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 les dommages causés 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 indemnités d'assistance, incluant les intérêts et les frais légaux qui y sont attachés, resteront au compte de ceux qui les ont supportées et ne seront pas admises en avarie commune, sauf si et seulement si une partie concernée par l'assistance a réglé tout ou partie de l'indemnité d'assistance (incluant les intérêts et les frais légaux) due par une autre partie (calculée sur la base des valeurs sauvées et non sur celle des valeurs contributives en avarie commune), la part de l'indemnité d'assistance due par cette autre partie sera créditée dans le règlement d'avarie commune à la partie qui l'a réglée et débitée à la partie pour le compte de laquelle le paiement a été fait.

b) Les indemnités d'assistance mentionnées au paragraphe (a) ci-dessus comprendront toute rémunération d'assistance dans la fixation de laquelle l'habileté et les efforts des assistants pour prévenir ou limiter les dommages à

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Art. 13 paragraph 1(b) of the International Convention on Salvage 1989 have been taken into account.

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

Rule VII. Damage to machinery and boilers

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

Rule VIII. Expenses lightening a ship when ashore and consequent damage

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and any loss or damage to the property involved in the common maritime adventure in consequence thereof, shall be allowed as general average.

Rule IX. Cargo, ship's materials and stores used for fuel

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

Rule X. Expenses at port of refuge, etc.

- (a) (i) When a ship shall have entered a port or place of refuge or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, the expenses of entering such port or place shall be allowed as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be allowed as general average.
- (ii) When a ship is at any port or place of refuge and is necessarily removed to another port or place of refuge 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 of refuge as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be allowed as general average. The provisions of Rule XI

l'environnement, tels qu'ils sont énoncés à l'art. 13.1 (b) de la Convention internationale de 1989 sur l'assistance, ont été pris en compte.

c) L'indemnité spéciale payable à l'assistant par l'armateur sous l'empire de l'art. 14 de ladite Convention, dans les conditions indiquées par le paragraphe 4 de cet article ou de toute autre disposition de portée semblable (tel que SCOPIC) ne sera pas admise en avarie commune et ne sera pas considérée comme une indemnité d'assistance au sens du paragraphe (a) de la présente Règle.

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 ou 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 rechargement ainsi que toute perte ou dommage aux propriétés engagées dans l'aventure maritime commune en résultant, seront admises en avarie commune.

RÈGLES IX. Cargaison, objets du navire et approvisionnement 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 en cas d'admission du coût des objets et approvisionnements du navire, 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) (i) Quand un navire sera entré dans un port ou lieu de refuge ou qu'il sera retourné à son port ou lieu de déchargement par suite d'accident, de sacrifice ou d'autres circonstances extraordinaires qui auront rendu cette mesure nécessaire pour le salut commun, les dépenses 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.

(ii) 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

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shall be applied to the prolongation of the voyage occasioned by such removal.

- (b) (i) The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be allowed as general average, when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, except in cases where the damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage.
- (ii) The cost of handling on board or discharging cargo, fuel or stores shall not be allowable as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.
- (c) Whenever the cost of handling or discharging cargo, fuel or stores is allowable as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be allowed as general average. The provisions of Rule XI shall 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 allowed as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

Rule XI. Wages and maintenance of crew and other expenses putting in to and at a port of refuge, etc.

- (a) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be allowed as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).
- (b) 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 of articles of employment.
- (c) (i) 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, fuel and stores consumed during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed

réparation 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) (i) 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.
 - (ii) 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 la 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 admissible 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'équipage raisonnablement encourus, ainsi que le combustible et les approvisionnement 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) Pour l'application de la présente règle ainsi que des autres règles, les salaires comprennent les paiements faits aux 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.
- (c) (i) 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

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upon her voyage, shall be allowed as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

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

(iii) 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 fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be allowable as general average, even if the repairs are necessary for the safe prosecution of the voyage.

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

(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(c), 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 allowable as general average.

Rule XII. Damage to cargo in discharging, etc.

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

Rule XIII. Deductions from cost of repairs

(a) Repairs to be allowed in general average shall not be subject to deductions in respect of "new for old" where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a

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, 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.

(ii) 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 des réparations non admissibles en avarie commune.

(iii) 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, 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.

(iv) Quand le navire est condamné ou ne poursuit pas son voyage primitif, 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.

(d) Le coût des mesures prises pour prévenir ou minimiser un dommage à l'environnement sera admis en avarie commune lorsqu'il aura été encouru dans l'une quelconque des situations suivantes:

(i) dans le cadre d'une opération conduite pour le salut commun qui, si elle avait été engagée par un tier à l'aventure maritime commune, lui aurait donné droit à une indemnité d'assistance;

(ii) comme 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) comme 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 admise en avarie commune;

(iv) comme 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.

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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 act, except for insulation, life and similar boats, communications and navigational apparatus and equipment. machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

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

(c) The costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated within the twelve months preceding the date of the general average act in which case one half of such costs shall be allowed.

Rule XIII. Deductions from cost of repairs

(a) Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be allowed as general average.

(b) Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be allowed as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there. Provided that for the purposes of this paragraph only, the cost of temporary repairs falling for consideration shall be limited to the extent that the cost of temporary repairs effected at the port of loading, call or refuge, together with either the cost of permanent repairs eventually effected or, if unrepaired at the time of the adjustment, the reasonable depreciation in the value of the vessel at the completion of the voyage, exceeds the cost of permanent repairs had they been effected at the port of loading, call or refuge.

(c) No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

Rule XV. Loss of freight

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

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

Rule XVI. Amount to be allowed for cargo lost or damaged by sacrifice

(a) The amount to be allowed as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice

Règle XIII. Deduction du coût des réparations

(a) 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 communication et de navigation, machines et chaudières, pour lesquels les déductions seront fixées d’après l’âge des différentes parties auxquelles elles s’appliquent.

(b) 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, ancres et chaînes. Les frais de cale sèche, de slip et de déplacement du navire seront admis en entier.

(c) 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 commune; en pareil cas, ces frais seront admis pour moitié.

Règle XIV. Réparations provisoires

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

(b) 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. A condition que, aux fins de ce paragraphe seulement, le coût des réparations provisoires à prendre en considération ne dépasse pas le montant du coût des réparations provisoires effectuées au port de chargement, d’escale ou de refuge majoré, soit du coût des réparations définitives éventuellement effectuées, soit, s’il n’y a pas eu de réparations à la date du règlement d’avarie commune, de la dépréciation raisonnable de la valeur du navire à la fin du voyage, et ce lorsque le montant des réparations provisoires est supérieur au coût des réparations définitives, si ces dernières avaient été effectuées au port de chargement, d’escale ou de refuge.

(c) 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.

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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.

(b) When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be allowed in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

Rule XVII. Contributory values

(a) (i) The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value.

(ii) The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge.

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

(b) To these values shall be added the amount allowed as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average or fall upon the ship by virtue of an award for special compensation under Art. 14 of the International Convention on Salvage, 1989 or under any other provision similar in substance.

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

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

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

Rule XVIII. Damage to ship

The amount to be allowed as general average for damage or loss to the

Devront être déduites du montant du fret 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

- (a) 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.
- (b) 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

- (a) (i) 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.
- (ii) 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 cargaison, et sous déduction des pertes ou avaries subies par la cargaison avant ou pendant le déchargement.
- (iii) 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.
- (b) A ces valeurs, sera ajoutée le montant admis en avarie commune de 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 à toute autre disposition de portée semblable.
- (c) 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.
- (d) Quand une cargaison est vendue en cours de voyage, elle contribue sur le produit net de vente augmenté du montant admis en avarie commune.

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ship, her machinery and/or gear caused by a general average act shall be as follows:

(a) When repaired or replaced,

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

(b) When not repaired or replaced,

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

Rule XIX. Undeclared or wrongfully declared cargo

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

(b) Damage or loss caused to goods which have been wrongfully declared an 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) The capital loss sustained by the owners of goods sold for the purpose of raising funds to defray general average disbursements shall be allowed in general average.

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

Rule XXI. interest of losses allowed in general average

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

(b) Each year the Assembly of the Comité Maritime International shall decide the rate of interest which shall apply. This rate shall be used for calculating interest accruing during the following calendar year.

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

(e) Le courrier, les bagages des passagers, les effets personnels et les véhicules à moteurs 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.

Règle XIX. Marchandises non déclarées ou faussement déclarées

- (a) 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 elles sont sauvées.
- (b) 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

- (a) La perte financière subie par les propriétaires des marchandises vendues pour obtenir les fonds nécessaires en vue de couvrir les dépenses d'avarie communes sera admise en avarie commune.
- (b) Les frais d'assurance des débours d'avarie commune seront également admis en avarie commune.

Règle XXI. Intérêts sur les pertes admises en avarie commune

- (a) Un intérêt sera alloué sur les dépenses, sacrifices et bonifications classées en avarie commune, 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.
- (b) Chaque année, l'Assemblée du Comité Maritime International décidera du taux de l'intérêt qui sera appliqué. Ce taux sera utilisé pour calculer le montant de l'intérêt acquis pendant l'année calendaire suivante.

General Average

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 of which the deposits have been collected. Payments an 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.

Rule XXIII. Time bar for contributions to General average

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

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

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

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

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 ayant 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 remboursement seront effectués sans préjudice des obligations définitives des parties.

Règle XXIII. Prescription applicable à l'avarie commune

(a) A moins qu'une loi applicable, relative à la prescription, n'en dispose de façon impérative:

(i) Tous droits à contribution d'avarie commune, y compris tous droits de réclamer en vertu d'engagements et de garanties d'avarie commune, seront prescrits par une période d'une année à partir de la date du dépôt du règlement d'avarie commune, à moins qu'une action n'ait été engagée avant cette échéance par le réclamant. Toutefois, aucune action ne pourra être exercée après un délai de six années à compter de la date où l'aventure maritime commune a pris fin.

(ii) Ces délais peuvent être prorogés par accord des parties intervenu après la fin de l'aventure maritime commune.

(b) Cette Règle ne s'appliquera pas entre les parties concernées par l'avarie commune et leurs assureurs respectifs.

D. PLACES OF REFUGE

REPORT OF THE INTERNATIONAL SUB-COMMITTEE ON PLACES OF REFUGE

The Subcommittee met on 3 June 2004 under the Chairmanship of Stuart Hetherington. The meeting considered the following eight issues, all of which were the subject of written papers and presentations:

1. The obligation to offer a place of refuge – Eric van Hooydonk
2. Penal liability – Frank Wiswall
3. Reception facilities – Gregory Timagenis
4. Civil liability and monetary incentives – Stuart Hetherington
5. Designation of places of refuge, mechanism for decision making – Richard Shaw

In addition to the papers published in the Vancouver papers there were papers on the website and an agenda paper identifying some 28 questions directed to issues raised by the papers.

The meeting was reminded that the genesis of CMI's involvement on this topic was the assistance rendered to IMO (as a result of the "Castor" incident in 2001) by responses to two questionnaires submitted to National Associations which considered what States had done in their national legislation to give effect to certain International Conventions: Salvage, UNCLOS and OPRC, and what the civil liabilities of States might be in circumstances in which oil pollution ensued from a failure to grant a place of refuge or to accept a place of refuge.

In addition there had been the following International developments since 2001:

- (i) The IMO Resolution giving effect to Guidelines for a master in need of a place of refuge and for actions expected of coastal States;
- (ii) EEC Vessel traffic Monitoring Directive of 2002;
- (iii) CMI Bordeaux Colloquium, June 2003;
- (iv) CMI International Subcommittee, November 2003.

In his extremely well researched (and argued) paper Eric van Hooydonk pointed out that the right according to customary international law to be granted a place of refuge has become clouded and can no longer be regarded as an absolute right.

There was a view expressed at the meeting by some delegates and two significant stakeholders (IUMI and IAPH) that CMI should, with the support of IMO, seek to develop an International Convention or amendments to existing Conventions or Protocols to clarify the framework needed to balance the interests of shipowners and others interested in the safety of the ship and

the potential dangers to the environment and others from a damaged vessel.

Others, however, questioned whether States would ratify a new Convention (or permit amendments to Conventions) if they impacted on their sovereignty.

Some National Associations considered that the work had ventured beyond the tasks requested of CMI by IMO.

There was a strong view that if any new Instrument (or amendments to existing Instruments) is to be developed questions of financial compensation and security would need to be included to make it a feasible proposition. There was no dispute that there are uncertainties in the current situation in which some of the framework Conventions await ratification (HNS and Bunker) and one is still in the gestation period (Wreck Removal). It is thought that these circumstances do not encourage States to assist vessels in distress. There was a general view that if there is a risk that States face liabilities they should be removed and any gaps in the present regimes need to be covered, so as to encourage States that they will, so far as possible, not suffer if damage ensues after a place of refuge has been granted.

There was also support for the view that the preferable approach concerning security for any potential claims is that all ships should be required to carry compulsory liability insurance and there should be direct action to avoid the problems associated with delay when negotiations take place over the amount and wording of a guarantee or letter of comfort.

Great concern was expressed by a number of delegates in relation to the treatment of masters and others which Frank Wiswall highlighted in his paper on criminalisation. Concern was expressed as to the adverse effect it has on the willingness of a ship's master and/or an owner to seek a place of refuge. There would seem to be a possibility that CMI could assist IMO and ILO in seeking to resolve this issue. As our Rapporteur pointed out, it is not only ship's masters who are at risk but also salvors and lawyers who may be on board in a salvage situation where States, in breach of their obligations under the United Nations Law of the Sea Convention, take action to detain and charge masters, salvors and others arising from a marine casualty or incident.

Frank Wiswall quoted from a presentation to the European Parliament of the IMO Secretary General which is reproduced below:
"My concern is threefold:

1. I am concerned about the impact the prolonged detention may have on the morale of the seafarers under detention;
2. I am concerned about the seafarers of the world as a whole who may justifiably fear for their future livelihoods following an accident involving the ships on which they serve; and
3. I am concerned about the impact an act of detention may have on the global campaign to attract youngsters to the maritime profession, particularly at a time when there is a shortage of quality officers and there is a strong possibility of a shortage of ratings as well in the not too distant future

The IMO Conventions have not been drafted with the prospect of non-

Places of Refuge

compliance giving rise to criminal prosecution and, therefore, any move to criminalise polluters will constitute a significant departure from the established philosophy in the formulation of IMO Conventions”.

Whilst there appeared to be general agreement that the SOSREP model was an ideal, so that decision making is done by independent people (not amenable to political pressure) it was recognised that this may not suit all cultures. Similarly, it was accepted that some countries take the position that there is no problem with predesignating and publicising places of refuge whilst others prefer not to publicise in advance and treat each situation on an ad hoc basis.

Whilst considerable interest was expressed in Gregory Timagenis’ paper recommending a requirement that reception facilities (such as floating docks) may need to be located, at least near busy seaways, which may be funded on a regional basis, delegates expressed concerns about the practicality of this suggestion and remarked on the problems of docking laden vessels, the unpredictability of where their services might be needed, and the cost of providing such facilities.

The Subcommittee proposes to prepare a report arising from the meeting, especially dealing with the issues of liability and compensation and continue its work in co-operation with the Legal Committee of the IMO and other interested bodies.

The numbers that attended throughout the day (standing room only) and the volume of materials produced on the topic by CMI and others speaks volumes for the interest there is in the topic and the work that needs to be done to bring greater clarity and uniformity to this topic.

STUART HETHERINGTON

Chairman International Subcommittee

**REPORT ON PLACES OF REFUGE
SUBMITTED BY COMITÉ MARITIME INTERNATIONAL
TO THE IMO LEGAL COMMITTEE**

Executive Summary

In accordance with a request made by the Legal Committee at its 87th Session in October 2003 the CMI has carried out a further study of this topic and submits this Report.

Action to be taken

This Report concludes (under the heading “Solutions”) that either an International Convention, or amendments to existing Conventions, or Guidelines need to be prepared, covering the topics described in the Report, in order to remedy the deficiencies in the present regime identified in this Report. CMI invites delegates to discuss these alternatives and decide which is preferred.

History of Project

At the 87th Session the Legal Committee received a report (LEG 87/7/2) from CMI, which summarised the responses received from National Associations to the second Questionnaire which had been sent to them enquiring as to whether their States would accept liability where pollution damage ensued in circumstances in which the vessel had either been permitted a Place of Refuge, or in circumstances in which a vessel had been denied or refused a Place of Refuge.

At the 23rd Regular Session of the Assembly of the IMO a Resolution requested that the Legal Committee “consider the provision of financial security to cover coastal States’ expenses and/or compensation issues and to take action as it may deem appropriate”.

At its 38th Conference in Vancouver, BC, Canada in June 2004 CMI devoted a day to discussing 8 topics relevant to Places of Refuge issues. Those topics included “The Obligation to offer a Place of Refuge”, “Penal Liability”, “Reception Facilities”, “Civil Liability and Monetary Incentives”, and “Designation of Places of Refuge and Mechanisms for Decision Making.” Papers were prepared on each of the topics which were discussed; which can be found on the CMI website (www.comitemaritime.org).

A Report of the International Subcommittee is contained in an Appendix to this Report which has been deposited in the IMO library and copies will be made available in the English, Spanish and French languages by the CMI observer delegation to the Legal Committee Meeting.

In addition to delegations representing National Associations the International Association of Ports and Harbours (IAPH), the International Salvage Union (ISU), the International Group of P and I Clubs, the International Chamber of Shipping (ICS) and the International Union of Marine Insurers (IUMI) were represented and participated in the debates. IAPH, ISU and IUMI are strong advocates for an International Convention to be developed in this area.

Issues identified

A large number of delegations supported the views that:

- The right, according to customary international law, for a vessel in distress to be granted a place of refuge no longer appears to be recognised by many States as an absolute right and has become clouded.
- Either an International Convention, (or Guidelines or amendments to other Conventions) supplementing and consistent with the current liability regimes needs to be prepared in order to address the deficiencies in the present system, and would cover such topics as:
 - (a) the rights and obligations of States when faced with a request for access to a place of refuge, but which recognises the customary international law position pursuant to which there was an absolute right to be granted a place of refuge and a State's sovereignty and right to protect the marine and land based environments,
 - (b) civil and criminal liability/immunity of States and others involved in place of refuge situations,
 - (c) compulsory insurance, direct action, financial compensation and security for States who grant access to places of refuge,
 - (d) the impartiality and objectivity of decision makers,
 - (e) the application of consistent international approaches in relation to the predesignation and publicity of identified places of refuge,
 - (f) availability of funds to meet gaps in present liability regimes.

It was noted that steps are being taken to deal with some of these issues on a unilateral basis by some countries and on a regional basis, which will lead to a lack of uniformity in maritime law. (See for example the EEC Vessel Traffic Monitoring and Information System Directive 2002 Articles 20 and 26.3, the latter of which requires the Commission to "examine the need for measures to facilitate the recovery of or compensation for costs and damage incurred for the accommodation of ships in distress, including appropriate requirements for insurance or other financial security").

Legal deficiencies in the present system

1. There is currently no single International Convention which identifies the rights and obligations of a State when it is faced with a request for a place of refuge. There are many Conventions which touch on the subject and some contain conflicting rights and obligations. Such Conventions include the Salvage Convention 1989 (especially Article 11); the Solas Convention, (Regulation 15 of Chapter V); the OPRC Convention 1990 (especially

Articles 5, 6, 7 and 10); and UNCLOS 1982 (especially Articles 17, 18, 21, 24, 39, 56, 98, 192, 194, 195, 198, 199, 211, 221, and 235.) The IMO Guidelines on places of refuge for ships in need of assistance (Adopted 5 December 2003) provide a most useful framework from an operational perspective and also, perhaps, set benchmarks against which the conduct of shipowners, masters, salvors and States can be judged in a place of refuge situation but does not clarify the sometimes contradictory or inconsistent legal obligations that some of those parties may currently be under.

2. Although there are principally four International Conventions dealing with the liabilities arising from pollution damage: Civil Liability Convention 1969 (CLC), and its Protocols; The Fund Convention 1971, and its Protocols; the Hazardous and Noxious Substances by Sea Convention 1996 (HNS); the Bunker Convention 2001; and the proposed Wreck Removal Convention will have a role to play, not all are in force and even those which have wide support in the international community may not necessarily be in force in a country from whom access to a place of refuge is sought.

3. Even in circumstances in which one or more of the four principal Conventions apply in a place of refuge situation they have within them exclusions from liability for pollution damage which benefit shipowners (and their insurers), and which could operate to the detriment of a State in such a situation. They are not identical but generally apply in circumstances in which pollution damage results from: an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character or was wholly caused by an act or omission done with intent to cause damage by a third party or was wholly caused by the negligent wrongful act of any government or local authority responsible for the maintenance of lights or navigational aids. (See for example: CLC-Article 3; Fund Convention Article 4 para 2; HNS Convention Article 7 para 2; Bunker Convention Article 3.)

4. There are further significant exclusions under those Conventions, which could be relevant in a Place of Refuge situation. They apply where the owner proves that the pollution damage resulted wholly or partially, either from an act or omission done with intent to cause damage by the person who suffered the damage, *or from the negligence of that person*. (See for example CLC Article 3(iii); Fund Convention Article 4 para 3; HNS Convention Article 7 para 3; Bunker Convention Article 3 para 4.)

5. In addition all the regimes have built into them limitation provisions, which cap the ship owner's liability and could leave a State or its citizens uncompensated in a Place of Refuge situation (See for example CLC Article 5 of the 1969 Convention, as amended by the 1992 Protocol; Fund Convention Article 4, as amended by the 1992 Protocol; HNS Convention Article 9; Bunker Convention Article 6.)

6. Where a State fails adequately to assess a request for access to a ship in distress and refuses such access and the ship then founders as a result it is arguable that the State has acted negligently and the ship owner may not be liable to compensate that State for any ensuing damage which is occasioned.

Furthermore the State may have a liability to its own citizens or another State for acting negligently and failing to grant access to a place of refuge, especially where a liability Convention does not apply or the fund available from the shipowner is inadequate to meet all claims.

Concerns identified in the present system

States who are unwilling to take a risk with a vessel seeking a place of refuge insist on financial securities well in excess of the amounts pursuant to which the ship owner would be entitled to limit its liability for any ensuing damage under either the applicable limitation provisions contained in the relevant Convention or under the applicable Limitation Convention. Such demands may well be in breach of the treaty obligations of a coastal State.

Some decisions to refuse a place of refuge have often been taken by States without the benefit of objective technical examination of all the facts and circumstances.

A divergence of views amongst States as to whether it is appropriate to publicise predetermined places which are regarded as suitable for a Place of Refuge.

The absence of a clarifying framework which sets out the rights and obligations of States leads to bad decision making, wasted effort and time potentially leading to bad outcomes.

Both salvors and States need to be given greater incentives to assist ships in distress and the availability of a fund on an International or regional basis to meet expenditure which is not otherwise likely to be recovered. This would greatly enhance the present system. (A disaster contingency fund being one suggestion.)

Any new Convention should contain a rebuttable right of entry, in other words that a State has a duty to permit access to a vessel in distress but not if it can demonstrate that the condition of the ship is more likely than not to worsen and cause greater harm than might otherwise be caused if the request was refused.

The IMO Guidelines on Places of Refuge for ships in need of assistance, to which reference has been made earlier, could be incorporated in a new process oriented Convention.

The view has also been expressed that, as with reception facilities for oil residues, the creation of reception facilities for ships in distress (special permanent or floating docks located in strategic geographical locations) would facilitate the determination of the rights and obligations of States in receipt of a request for a place of refuge, as well as the decision making and determination of liability issues. Relevant provisions could be included in a new Convention on Places of Refuge or in an amendment to MARPOL 73/78 or the OPRC Convention. Concerns were expressed in connection with this idea as to its practicability and funding.

Solutions

1. Either preparation of an international Convention which, if thought appropriate, could include provisions covering the following topics:
 - (a) the rights and obligations of States when they are in receipt of a request for a place of refuge,
 - (b) the granting of immunity for States from any claims, including recourse actions, when they provide a place of refuge,
 - (c) the consequences for States who unjustifiably fail to grant a place of refuge,
 - (d) the circumstances in which States can require financial securities from shipowners, their form, limits and terms,
 - (e) the liability compensation regime(s) which are to apply when pollution ensues in circumstances when a right of access to a place of refuge is granted or refused,
 - (f) the requirement for objectivity and technical expertise to be applied when decisions are made to grant or refuse a place of refuge,
 - (g) the requirement for detailed reasons for refusal to be set out,
 - (h) the requirements for places of refuge to be designated in advance by the coastal State and whether this should be publicised,
 - (i) what, if any, criminal penalties are applicable when places of refuge are requested and granted or refused,
 - j) whether compulsory liability insurance should be carried by all vessels seeking a place of refuge,
 - (k) whether direct action against the insurer should be permitted in a place of refuge situation,
 - (l) whether a shipowner requesting a place of refuge should be required to waive any applicable limitation of liability,
 - (m) the establishment of a fund (or funds) on either an International or regional basis to meet any excess liabilities not covered by current regimes faced by a State granting a place of refuge.
2. **Or** drafting amendments to International Conventions already in existence to cover the matters listed in 1 (a) to (m), such as CLC, Intervention Convention 1973, Salvage Convention 1989, UNCLOS 1982, MARPOL 1973, SOLAS, OPRC 1990, HNS 1996, Bunker 2001.
3. **Or** drafting Guidelines dealing with the matters listed in 1 (a) to (m).

STUART HETHERINGTON
Chairman International Subcommittee

E. MARITIME SECURITY

INTRODUCTION

Interest in maritime security has intensified since the atrocity of 11 September, 2001, and with regard to the regime of international maritime law has resulted in rapid amendment of the Annex to the International Convention on Safety of Life at Sea, 1974 to add Chapter XI-2 and the International Ship and Port Facility Security ['ISPS'] Code, entering into force on 1st July 2004. Also underway at the time of the Vancouver Conference was the effort to agree on far-reaching amendments to the Convention on Suppression of Unlawful Acts ['SUA'] against Maritime Navigation, (Rome) 1988, and its Protocol on Fixed Platforms. The latter objective has been the center of attention at recent sessions of the IMO Legal Committee, and is expected to come to a diplomatic conference in 2005. These matters were the focus of two panel discussions on Tuesday 1st June, 2004.

The panels were chaired by Dr. Frank Wiswall, Vice-President of the CMI, and the members were Dr. Rosalie P. Balkin, Director of the Legal and External Affairs Division of IMO, Calvin M. Lederer, Esq., Deputy Judge Advocate-General of the United States Coast Guard, and Mark A.M. Gauthier, Esq., Senior Legal Counsel to the Canadian Department of Transport. Mr. Lederer presented a paper for the first session on the proposed amendments to the SUA Convention and Mr. Gauthier gave a detailed power-point presentation concerning the prospective application and enforcement of the ISPS Code by Canada. Both sessions were very well attended, and a lively discussion of the problems and considerations highlighted by the presentations followed each of the respective presentations.

The two presentations follow, having been revised by their authors for publication in the *Yearbook*.

Respectfully submitted,

FRANK L. WISWALL, JR.

THE INTERNATIONAL SHIP AND PORT FACILITY SECURITY CODE (ISPS CODE): AN OVERVIEW

MARK A.M. GAUTHIER*

Genesis of the ISPS Code

In her inspiring address at the opening of the 38th Conference of the CMI, the Chief Justice of the Supreme Court of Canada remarked in relation to world-wide terrorism that a major future threat might well come as a “bomb in a box”. It was precisely in order to minimize the risk of a bomb in a box or other equally frightening terrorism scenarios that in the wake of 9/11 the international community adopted a major legal instrument to combat terrorism.

On 12 December 2002, a diplomatic conference on Maritime Security held at the Headquarters of the International Maritime Organization (IMO) adopted new regulations in various amended chapters of the Safety of Life at Sea Convention, 1974 (SOLAS 74) as well as a new chapter XI-2 of SOLAS 74 entitled “Special Measures to Enhance Maritime Security”. The centerpiece of the diplomatic conference was the adoption of the ISPS Code relating to the security of ships and port facilities insofar as ship-port and ship-to-ship interface is concerned. The amendments to SOLAS 74, including the ISPS Code, came into force for over 150 States Parties to SOLAS 74 (Contracting Governments) on 1 July 2004.

Structure of the ISPS Code

The ISPS Code contains two distinct but interrelated parts.

Part A contains provisions that Contracting Governments are obliged to implement; these provisions are generally referred to as the mandatory requirements of the ISPS Code.

Part B contains provisions that are non-mandatory in nature which set out the processes envisaged in establishing and implementing measures and arrangements needed to achieve and maintain compliance with the provisions of chapter XI-2 of SOLAS 74 and Part A of the ISPS Code and identifies the main elements on which guidance is offered. It also sets down essential considerations which should be taken into account when considering the application of the guidance relating to ships and port facilities. While the provisions of Part B of the ISPS Code are essentially recommendatory, Contracting Governments are not prevented from making some or all of the

* This paper is based on the presentation made by Mark A.M. Gauthier, Senior Counsel, Legal Services, Canadian Department of Transport at the 38th Conference of the CMI held in June 2004 in Vancouver, Canada. This paper does not touch upon any of the points made at the Conference on the implementation of the ISPS Code by Canada.

provisions of Part B mandatory in their territory and in fact, some Contracting Governments have done so in some measure; for example, Canada.

General Remarks

The following overview focuses on Part A of the ISPS Code but from time to time, reference may be made to Part B for added clarification.

For ease of understanding, the various provisions of the ISPS Code may be grouped as follows:

- scope of application;
- responsibilities of Contracting Governments in relation to companies;
- responsibilities of companies;
- responsibilities of Contracting Governments in relation to port facilities;
- responsibilities of port facilities;
- cross-cutting obligations

The ISPS Code contains numerous other provisions which are not specifically referred to in this paper but to which the reader may refer for a more complete understanding of the instrument.

Scope of Application

The ISPS Code applies to the following types of ships engaged on international voyages:

- passenger ships, including high-speed passenger craft;
- cargo ships, including high-speed craft of 500 gross tonnage and upwards; and
- mobile offshore drilling units.

The ISPS Code also applies to port facilities serving such ships on international voyages.

The ISPS Code specifically does not apply to warships, naval auxiliaries and other ships owned and operated by a Contracting Government and used only on government non-commercial service.

In Part B of the ISPS Code, Contracting Governments are encouraged to establish appropriate security measures in respect of fixed and floating platforms as well as mobile offshore drilling units that are not navigating but that are on location in order to allow interaction with ships and in turn, port facilities, that are required to comply with the ISPS Code. A similar recommendation applies to ships that are not covered by the ISPS Code.

Responsibilities of Contracting Governments in relation to companies

For the purposes of the ISPS Code, a Company means the owner of a ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code. This definition is taken from chapter IX-1 of SOLAS 74.

The two principal obligations of Contracting Governments in respect of companies are:

- to receive, verify and approve Ship Security Plans based on Ship Security Assessments; and
- to issue an International Ship Security Certificate in respect of each of the company's ships.

It is noted that the ISPS Code permits a Contracting Government to delegate the approval of a Ship Security Plan and the issuance of an International Ship Security Certificate to a Recognized Security Organization approved by the Contracting Government.

Responsibilities of companies

The ISPS Code describes a number of responsibilities placed upon companies which in turn trigger obligations for shipboard personnel. The following are examples of specific responsibilities of companies:

- designating a Company Security Officer who is vested with several responsibilities including preparing a Ship Security Assessment and a Ship Security Plan;
- designating a Ship Security Officer for each of its ships who has general responsibility for security on board ships including the implementation and maintenance of the Ship Security Plan;
- training of the Company Security Officer and the Ship Security Officer in respect of their responsibilities; and
- ensuring that Masters in their employ have information on
 - who is responsible to appoint crews;
 - who decides on the employment of a ship; and
 - any applicable charter party.
- submitting the Ship Security Assessment and Ship Security Plan to the Contracting Government for verification and approval.

It is noted that a Recognized Security Organization may also complete a Ship Security Assessment and a Ship Security Plan.

A Ship Security Assessment is an evaluation of the vulnerability and threat posed by a ship based on such factors as the location and nature of the ship or port facility with which it interfaces. The Ship Security Assessment, when completed, allows a risk-based approach to be used in the Ship Security Plan.

The ISPS Code identifies extensive requirements for a Ship Security Assessment such as identifying, for example:

- possible threats to key shipboard operations;
- shipboard weaknesses such as human factors and access to a ship; and
- training deficiencies.

Likewise, the ISPS Code sets out extensive requirements for a Ship Security Plan. The contents of each Ship Security Plan will vary depending on the ship it covers. As the Ship Security Assessment will identify a particular feature of a ship and potential threats and vulnerabilities faced by the ship, the Ship Security Plan will require these features to be addressed in detail. The following are a few examples of what forms part of a Ship Security Plan:

- the identification of restricted areas on the ship;

- measures for preventing dangerous substances from being brought on board a ship;
- measures to prevent unauthorized access to the ship;
- the description of evacuation procedures; and
- procedures for interfacing with the security activities of port facilities.

Responsibilities of Contracting Governments in relation to port facilities

The obligations of a Contracting Government in respect of port facilities closely follow the pattern of obligations relating to companies. The three main responsibilities for Contracting Governments are:

- to determine the extent to which the ISPS Code applies to port facilities which, although used primarily by ships not engaged on international voyages, are required occasionally to serve ships arriving or departing on an international voyage;
- to carry out and approve a Port Facility Security Assessment; and
- to develop and approve a Port Facility Security Plan.

The ISPS Code enables a Contracting Government to delegate the development of a Port Facility Security Assessment and a Port Facility Security Plan to a Recognized Security Organization; however, both the Port Facility Security Assessment and the Port Facility Security Plan must be approved by the Contracting Government.

As in the case of a Ship Security Assessment, the ISPS Code enumerates in considerable detail the requirements for a Port Facility Security Assessment which includes at least the following elements:

- identification and evaluation of important assets and infrastructure it is important to protect
- identification of possible threats to assets and infrastructure;
- identification, selection, prioritization of countermeasures and procedural changes and their level of effectiveness in reducing vulnerability; and
- identification of weaknesses, including human factors, in the infrastructure, policies and procedures.

Likewise, the requirements for a Port Facility Security Plan are complex. The following are a few such requirements:

- measures designed to prevent unauthorized access to port facilities;
- procedures for evacuation in case of security threats;
- duties of port facility personnel assigned security responsibilities;
- measures designed to ensure safe and effective security of cargo and cargo-handling equipment; and
- identification of the Port Facility Security Officer.

Responsibilities of Port Facilities

The ISPS Code describes a number of onerous responsibilities on port facilities; the following are a few examples:

- designating a Port Facility Security Officer upon whom is placed several key security responsibilities including

- developing in conjunction with the Contracting Government the Port Facility Security Plan, maintaining and exercising it from time to time;
- co-coordinating the implementation of Port Facility Security Plans with companies;
- training all security personnel at port facilities; and
- securing the approval of a Port Facility Security Assessment and a Port Facility Security Plan from the Contracting Government.

Cross-cutting Obligations

There are two main obligations of Contracting Governments that apply to both companies and port facilities; first, the setting of Security Levels and second, the determination of when a Declaration of Security is required.

A Security Level is the level which triggers the activation of increased security measures applied in the context of ship-port and ship-to-ship interface. Higher Security Levels indicate greater likelihood of occurrence of a security incident. Factors to be considered in setting the appropriate Security Levels include the degree that the threat information is credible, corroborated and imminent as well as the potential consequences of such a security incident. The ISPS Code defines three levels of security:

- Level 1
Normal; the level at which minimum protective security measures are to be maintained at all times;
- Level 2
Heightened; the level at which additional protective security measures are to be maintained for the time of heightened risk of a security incident; and
- Level 3
Exceptional; the level at which further specific security measures are to be maintained while a security incident is probable or imminent.

While a Contracting Government is required to set the various Security Levels, however, chapter XI-2 of SOLAS 74 and the ISPS Code itself clearly recognize that the input of a ship's master is important in the exercise of setting Security Levels and that the master of a ship has the ultimate responsibility for the safety and security of his ship. The details for ships and port facilities operating at the three Security Levels referred to above are itemized in detail in the Ship Security Plan and the Port Facility Security Plan respectively and Part B of the Code provides elaborate guidance in this respect.

A Declaration of Security is an agreement reached between a ship and either a port facility or another ship with which it interfaces specifying the security measures each will implement in a particular situation. Typically, a Contracting Government will determine when a Declaration of Security will be executed. The elements of this determination would be set out in the Ship Security Plan or the Port Facility Security Plan as approved by the Contracting Government. A Contracting Government may on a case-by-case basis determine that a Declaration of Security is required by assessing a specific risk

the ship-port or ship-to-ship interface poses to persons, property or to the environment. Notwithstanding much of the detail concerning the triggering of Declarations of Security are set out on paper in various plans, nonetheless it is always open to a ship or port facility to request a Declaration of Security. The main purpose of a Declaration of Security is to ensure agreement is reached between the ship and the port facility or with other ships with which it interfaces as to the respective security measures each will take in accordance with the provisions of their respective approved Security Plans. The following are three examples where typically a Declaration of Security may be requested:

- if a ship at a port facility or a ship and another ship are operating at different Security Levels;
- one of them does not have a Security Plan approved by a Contracting Government; and
- the Port Security Officer or the Ship Security Officer identifies the security concerns about a port facility-ship or ship-to-ship interface.

In closing, the objective of the ISPS Code is to establish an international framework involving cooperation between Contracting Governments, agencies, local administrations, the shipping and port industries in order to detect security threats and take preventative measures against security incidents affecting ships and port facilities used in international commerce. The ISPS Code and the various domestic laws and regulations implementing it represent the paper-work part of this undertaking. All parties touched by concerns over maritime security must ever be mindful that the efforts of an international community in this respect must not remain a paper exercise but that the genuine challenge faced by all concerned remains the consistent, uniform and harmonized implementation of the control and compliance measures associated with the ISPS Code which will contribute toward the genuine enhancement of maritime security in the future.

COMBATING MARITIME TERRORISM DEVELOPMENTS IN THE CONVENTION ON THE SUPPRESSION OF UNLAWFUL ACTS AFFECTING MARITIME NAVIGATION

CALVIN M. LEDERER*

Introduction

I thank the Comité Maritime International for your invitation to review developments involving the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation. The United States Coast Guard has been privileged to participate in the activities of the International Maritime Organization in connection with the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation as one of several agencies of the United States Government, and we have been pleased to contribute to the efforts of the Department of State and the international community to review and recommend amendments to the Convention, that are reviewed here.¹

Current convention

The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation² and its Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, were the first anti-terrorist instruments to be adopted specifically dealing with international shipping.

The Convention, completed in 1988, and its Protocol – referred here together as “SUA” – entered into force on March 1, 1992. Ten years later, in March 2002, there were 67 States Parties to SUA. As of the end of April 2004, that number had increased to 104 States Parties, reflecting the apparent seriousness with which the nations of the world have taken the threat of

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¹ I am indebted to several colleagues for their assistance in preparing these remarks, including Lieutenant Commander Richard Schachner, Lieutenant Commander Brad J. Kieserman, Captain Joseph F. Ahern, Mr. Wayne Raabe of the U.S. Department of Justice, Mr. J. Ashley Roach of the U.S. Department of State, and Ms. Linda Jacobson of the U.S. Department of State, who has led the efforts described here.

² Mar. 10, 1988, 1678 U.N.T.S. 221. See also <http://untreaty.un.org/English/Terrorism/-Conv8.pdf>.

³ See http://www.imo.org/Conventions/mainframe.asp?topic_id=247. Supplementary note: as of Oct. 30, 2004, IMO reported 13 States Parties.

international terrorism since September 11. That total represents more than 81 percent of the world's tonnage.³ The United States ratified SUA and its Protocol on December 6, 1994, and it entered into force for the United States on March 6, 1995.

SUA was the international response to the *Achille Lauro* hijacking in 1985.⁴ The aim of the Convention is to ensure prosecution and punishment of perpetrators of terrorist acts. SUA operates on the basis that States Parties are required to legislate against the acts described in SUA and establish jurisdiction to prosecute in certain situations. Where the alleged offender is present in the territory of the State Party, that State Party must either prosecute or extradite to another Party with jurisdiction.

Article 3 establishes the categories of offenses likely to endanger the safe navigation of a ship that are to be criminalized by States Parties through national legislation.

Article 6 explains that States Party must establish jurisdiction in respect of offenses against or on board ships flying their flag, committed in their territory or territorial sea, or by a national of the State. Jurisdiction is discretionary with respect to an offense in which a national is seized, threatened, injured, or killed; if an offense is intended to compel that State to do or abstain from doing any act; or if a perpetrator is a stateless resident and is habitually resident in that State.

The United States enacted criminal legislation addressing violence against maritime navigation and maritime fixed platforms in 1994 to implement our SUA obligations.⁵

Consideration of Amendments by the Legal Committee of the International Maritime Organization

In response to the attacks on the United States on September 11, 2001, the twenty-second IMO Assembly resolved on November 20, 2001, that the

⁴ See generally MICHAEL K. BOHN, *ACHILLE LAURO HIJACKING: LESSONS IN THE POLITICS AND PREJUDICE OF TERRORISM* (2004).

⁵ U.S. domestic legislation is contained in Title 18, U.S. Code, §§ 2280, 2281, that make it a federal offense to seize or exercise control over a ship by force, threat or intimidation; to perform an act of violence against a person on board if likely to endanger the safe navigation of the ship; to destroy a ship or damage a ship or its cargo; to place a destructive device or substance on a ship; to damage or destroy maritime navigational facilities; to communicate information known to be false, thereby endangering the safe navigation of a ship; or to kill or injure any person in connection with the commission of these offenses, or an attempt to do so. Abetting or threatening the commission of any of these offenses is also criminal. Jurisdiction is established when the act is against a U.S. flagged ship, a U.S. national is perpetrator or victim, the offender is subsequently found in the U.S. (and we do not extradite that person), or if such activity is committed in an attempt to compel the U.S. to do or abstain from doing any act. See Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, Title VI, § 60019(a), 108 Stat. 1975-1977 (1994). *United States v. Lei Shi et al.* (D. Hi.) involved a prosecution under § 2280 stemming from the U.S. Coast Guard interception of the 192-foot Seychelles-flagged fishing vessel Full Means 2 180 nautical miles south southeast of Hilo, Hawaii. The Coast Guard found the body of the People's Republic of China (PRC) first mate in the ship's freezer and the Taiwan master missing. On Jan. 30, 2004, Lei Shi pled guilty to murdering both.

Maritime Safety Committee, Legal Committee, and Facilitation Committee should review, on a high priority basis, the instruments under their purview to determine whether they should be updated and to determine whether there is a need to adopt other maritime security measures.⁶

Before September 11, the United Nations recognized that terrorism operates globally,⁷ so the notion of expanding anti-terrorism efforts from fragmented domestic or regional approaches to a global approach is consistent with that view. Accordingly, the United States proposed amendments to SUA at LEG 84 in 2002 to facilitate, strengthen, and expand international cooperation and coordination. The United States proposed adding additional terrorist-related offenses to Article 3 that would criminalize the commission of terrorist acts from a ship or by a ship that do not necessarily endanger the safe navigation of the ship directly.⁸ These included, for example: intentionally and unlawfully releasing harmful substances, such as chemical, biological, radiological substances, that have the capacity to cause death or seriously bodily injury to the ship's crew or passengers. The United States also proposed that SUA should be amended to criminalize the transport of weapons of mass destruction, their means of delivery, and certain dual use items. States are already prohibited from transferring many of these items under the Biological and Chemical Weapons Conventions and the Nuclear Non-Proliferation Treaty.⁹

The Legal Committee supported establishment of a Correspondence Group under the leadership of the United States,¹⁰ comprised of 65 States and

⁶ IMO Res. A.924(22), Review of measure and Procedures to Prevent Acts of Terrorism Which Threaten the Security of Passengers and Crews and the Safety of Ships.

⁷ Before September 11, the Security Council called on nations to intensify efforts against terrorism (S.C. Res. 1269, U.N. Doc. S/RES/1269 (1999)) and the General Assembly condemned terrorism generally (G.A. Res. 158, U.N. Doc. A/RES/55/158 (2001)). See also G.A. Res. 60, U.N. Doc. A/RES/49/60 (1994). Immediately after September 11, the Security Council recognized the right of self defense under Article 51 of the U.N. Charter, and identified international terrorism as a threat to international peace and security. S.C. Res. 1368, U.N. Doc. S/RES/1368 (2001). See generally Curtis A. Ward, *Building Capacity to Combat International Terrorism: The Role of the United Nations Security Council*, 8 J. CONFLICT & SECURITY L. 289 (2003).

⁸ Anticipating the Assembly resolution, the Legal Committee added review of SUA to its 2002 Work Programme during LEG 83, and, with the advent of the resolution placed SUA on its agenda for LEG 84.

⁹ Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxin Weapons and on Their Destruction, Apr. 10, 1972, 26 U.S.T. 583, 1015 U.N.T.S. 163; Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, *opened for signature* Jan. 13, 1993, S. Treaty Doc. No. 21, 103d Cong., 1st Sess., 1975 U.N.T.S. 469; Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, T.I.A.S. 68, 729 U.N.T.S. 161.

¹⁰ The Committee also defined broad Terms of Reference. IMO Doc. LEG 84/14, Annex 2. These were revised at LEG 86 and LEG 87. See IMO Doc. LEG 86/15, Annex 4 & LEG 87/17, Annex 4.

¹¹ Algeria, Argentina, Australia, the Bahamas, Barbados, Brazil, Belgium, Canada, Chile, Colombia, Croatia, Cyprus, Denmark, Ecuador, Egypt, Estonia, Finland, France, Germany, Ghana, Greece, Hong Kong (China), Iceland, India, Indonesia, Ireland, Italy, Jamaica, Japan,

7 organizations, including CMI.¹¹ During the intersessional period between LEG 84 and 85, the United States circulated draft amendments. In addition to expanding the offenses covered under SUA, a new article 8 *bis* was proposed, derived from several conventional sources discussed more fully later,¹² that would set out procedures to be used in connection with the boarding of a ship of one State Party by officials of another State Party.

At LEG 85 in 2002, there appeared to be consensus among the delegations that SUA needed to be updated, although delegations expressed different views on the scope of the draft amendments. At LEG 86 in 2003, the Committee approved revised Terms of Reference for the Correspondence Group that contemplated amendments adding new offenses and the shipboarding regime.¹³

During the intersessional period before LEG 87, the United States delegation circulated a new draft Article 3 *bis* that an informal working group convened at LEG 86 had prepared. The United States also prepared a White Paper on article 8 *bis* to describe more fully the intent and legal basis for concepts in 8 *bis* that other delegations flagged at LEG 86. The White Paper emphasized that the boarding regime of 8 *bis* conforms to the international law of the sea, including customary international law as reflected in the navigational articles set forth in the Law of the Sea Convention.¹⁴

LEG 87 in late 2003 offered the third opportunity to discuss SUA amendments, and consensus remained in favor of amending SUA, but consensus still eluded the committee regarding scope. During the following intersessional period, the United States circulated a new draft of Article 3 *bis*, drafted by an informal working group at LEG 87, as well as a revision of draft Article 8 *bis*.

Developments at LEG 88

Under the extraordinary leadership of Mr. Alfred Popp, LEG 88 met from April 19 to 23 this year. Most delegations supported revision and strengthening of SUA in order to provide an answer to the increasing risks posed by terrorism to maritime navigation, although several delegations referred to the need to ensure that the prospective SUA Protocols do not jeopardize the principle of

Kuwait, Latvia, Lebanon, Liberia, Lithuania, Malaysia, Malta, Marshall Islands, Mexico, the Netherlands, Nigeria, New Zealand, Norway, the People's Republic of China, Panama, Peru, the Philippines, Poland, Portugal, the Republic of Korea, the Russian Federation, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Switzerland, the Syrian Arab Republic, Trinidad & Tobago, Tunisia, Turkey, Ukraine, the United Kingdom, Uruguay, Vanuatu, Venezuela, the European Chemical Industry Council, the European Commission, the International Chamber of Shipping, the International Council of Cruise Lines, the International Maritime Committee, the World Conservation Union, and the World LPG Association. Comments received from the United Kingdom and ICFTU were incorporated in the proposed amendments.

¹² See nn. 26-31 and accompanying text, *infra*.

¹³ LEG 86/ 15, Annex 4. The Terms of Reference were also revised at LEG 87 (LEG 87/17, Annex 4).

¹⁴ *Opened for signature* Dec. 10, 1982, 1833 U.N.T.S. 397.

freedom of navigation and the right of innocent passage guaranteed by Law of the Sea Convention, as well as basic principles of international law and the operation of international commercial shipping.¹⁵ A majority of delegations agreed that the structure and substance of the amendments had improved, with aspects still requiring further discussion and development. Before convening a formal Working Group to deal with drafting matters, there was considerable discussion concerning matters of policy and principle that I will discuss shortly in connection with particular provisions. A formal Working Group, commissioned at LEG 87, met for the balance of the session.

LEG 88 closed with the decision to hold an intersessional meeting of the Working Group in July in London to move the amendments ahead with the view in mind of achieving progress at the next meeting of the Legal Committee this fall in time to move amendments to a Diplomatic Conference in 2005.¹⁶

Amendments Discussed and Emerging from LEG 88

The version of article 3 discussed at LEG 88 was one proposed intersessionally by the United States and included three categories of offenses: using a ship to commit terrorist acts, the nonproliferation offenses, and transporting somebody alleged to have committed an offense under the 12 terrorism conventions, including SUA.

The first proposed offense includes using against a ship, on a ship, or discharging from a ship any explosive, radiological material or prohibited weapon; discharging from a ship oil, liquefied natural gas, or other like substance; and using a ship in a manner that causes or is likely to cause serious injury or damage. The threat to do any of these acts is equally an offense.

The non-proliferation offense addresses transport of five different categories of items, grouped according to existing conventions, and ties the extent to which a transporter must have knowledge to whether and how the item is addressed in one of these conventions. Hence, a transporter must know that radiological materials not covered by the Nuclear Non-Proliferation Treaty, or explosives, are intended to be used to cause injury or damage, or to coerce or threaten. On the other hand, transport of certain weapons, defined in the Biological Weapons Convention, the Chemical Weapons Convention, or the Nuclear Non-Proliferation Treaty and where States are prohibited from transferring them, requires only that the transporter know the items to be such prohibited weapons.

Finally, the amendments prescribe criminality for transporting by ship a person, who has performed an Article 3 offense or an offense addressed in several other conventions, intending to assist that person in evading prosecution.

Proposed article 3 also criminalizes attempts, accomplice liability, and organizing or directing others to commit offenses, amounting to conspiracy.

¹⁵ IMO Doc. C 92/6/Add.1, at 1 (Apr. 27, 2004).

¹⁶ See note 45, *infra*.

Including as an offense discharges of substances in such quantities or concentration that cause serious damage to the environment was favored by a majority of delegations.¹⁷ Concerns were expressed about criminalizing the transportation of weapons of mass destruction, on the other hand, as well as the criminalizing activities subject to other treaties, and that all SUA amendments should apply in an identical way to all States, so as to avoid discriminatory treatment among Parties.¹⁸

The weapons of mass destruction amendment complements but is distinct from the Proliferation Security Initiative proposed by President Bush in Krakow on May 31, 2003, that was developed in cooperation with ten other nations, all of whom were on the SUA Correspondence Group.¹⁹ The amendment serves similar principles in both SUA and PSI to work in concert with other states and to strengthen national legal authorities.²⁰ The apparent substantial trafficking in proliferation-related goods and the increasing worldwide risk of terrorism demonstrate that the international community must act to strengthen the tools available to respond to these events. The risk to human life caused by terrorist use of weapons of mass destruction and other deadly material is unthinkable. Providing the legal authority to detain and prosecute those who undertake such illicit transfers is one important way to make it more difficult for terrorists to obtain such material and to shut down the networks trafficking in proliferation sensitive materials.

States have obligations to take these types of actions under existing U.N.

¹⁷ IMO Doc. C 92/6/Add.1, at 3.

¹⁸ *Id.*

¹⁹ Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, United Kingdom.

²⁰ The PSI States adopted "Interdiction Principles for the Proliferation Security Initiative" when they met in Paris on Sept. 4, 2003. See http://www.dfat.gov.au/globalissues/psi/psi_statement.html.

²¹ S.C. Res. 1373, U.N. SCOR, 56th Sess., 4385th mtg., U.N. Doc. S/RES/1373 (2001). UNSCR 1373, which is a resolution grounded in Chapter VII of the U.N. Charter, resolution, "[n]otes with concern the close connection between international terrorism and . . . illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security." Moreover, UNSCR 1373 provides that "all States shall . . . (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and entities acting on behalf of the direction of such persons." See generally Eric Rosand, Security Council Resolution 1373, The Counter-Terrorism Committee, and the Fight Against Terrorism, 97 AM. J. INT'L L. 333 (2003).

²² S.C. Res. 1456, U.N. SCOR, 58th Sess., 4688th mtg. at Annex, § 10, U.N. Doc. S/RES/1456 (2003). UNSCR 1456 reiterated the challenge posed by terrorist access to weapons of mass destruction and related materials and called upon international organizations to "evaluate ways in which they can enhance the effectiveness of their actions against terrorism," and emphasized "the importance of fully complying with existing legal obligations in the field of disarmament, arms limitation and non-proliferation and, where necessary, strengthening international instruments in this field . . ."

Resolutions. In particular, in U.N. Security Council Resolutions 1373²¹ and 1456²² called the Member States' attention to the problem of terrorists having access to nuclear, chemical, biological and other potentially deadly materials and called upon both Member States and international organizations to address the issue. On April 28 this year, the Security Council passed unanimously Resolution 1540 that requires nations to adopt and enforce effective domestic laws to prevent the components and technology for weapons of mass destruction and their delivery systems from falling into the hands of non-state actors.²³

Two delegations raised concerns as to whether the scope of the proposed new provisions on offenses exceeded the mandate given to the Committee in the 2001 resolution, particularly with respect to non-proliferation, and which arguably are different from anti-terrorism issues.²⁴ An overwhelming majority of delegations disagreed, and observations were made that the Committee's work had been fully reported to the Council and Assembly and

²³ S.C. Res. 1540, U.N. SCOR, 59th Sess., 4956th mtg., U.N. Doc. No. S/RES/1540 (2004) (see <http://www.state.gov/t/np/rls/other/31990.htm>), unanimously adopted under Chapter VII of the U.N. Charter which makes compliance mandatory for all 191 U.N. member states, decides that "all states shall refrain from providing any form of support to non-state actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery," and also requires states to "establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items" and establish and enforce "appropriate criminal or civil penalties for violations of such export control laws and regulations." The Resolution establishes a Security Council committee for a two-year period to monitor the implementation of the resolution, but it does not authorize enforcement action. The committee must make its first report to the council in six months. President Bush first proposed the resolution in an address to the U.N. General Assembly in September 2003. In that speech, the president called for the resolution to criminalize WMD proliferation, ensure strong export controls, and to secure sensitive materials. *Supplementary note*: The Intersessional Working Group that met in July considered and appeared to agree that S.C. Res. 1540 should be cited in the preamble. IMO Doc. LEG 89/4-1, Annex, at 1, n. 1 (Aug. 20, 2004).

²⁴ IMO Doc. C 92/6/Add.1, at 2 (Apr. 27, 2004). *Supplementary note*: As subsequently expressed before the Council, India suggested that amendments put before the committee purported to restrict the activities of SUA State parties that were not parties to the Nuclear Nonproliferation Treaty and the Chemical and Biological Weapons Conventions, exceeded IMO's mandate, and intruded upon the jurisdiction of other UN agencies by indirectly bringing about changes in other instruments through amendments to SUA. Pakistan's observer agreed. IMO Doc. C 92/SR.3, at 6, 9 (June 22, 2004). Both delegations reaffirmed their reservations at LEG 89. IMO Doc. LEG 89/16, Annexes 2, 3 (Nov. 4, 2004). See n. 45, *infra*.

²⁵ The report of LEG 88 was noted by the Council during its June 21-25, 2004, meeting. The Secretary General stated his agreement with the majority view that the Committee's mandate "was a wide one which imposed no restrictions on the Committee." "Given the dominant role of the international seaborne trade in the world at large, " he continued, "it would be wrong to deprive the maritime community of the opportunity to take a significant step towards preventing terrorist acts against the shipping industry or use of the industry as a tool to commit such acts." IMO Doc.C 92/SR.3, at 4 (June 22, 2004). The Council "reaffirmed the Legal Committee's mandate to continue its work on the SUA protocols in accordance with resolution A.924(22)." While noting India's reservation concerning the subject, the Council endorsed the view that matters of mandate should not be further discussed by the Legal Committee or the Working Group. IMO Doc. LEG 89/11 (Aug. 6, 2004).

no question had been raised at either body, and that the diplomatic conference should not be denied the opportunity to consider such provisions.²⁵

Networks that traffic in proliferation sensitive materials stand to benefit from legal gaps that might exist in the implementation of existing nonproliferation treaties and regimes. One gap that these amendments can remedy is the lack of extraterritorial applicability with respect to the implementing legislation under the Biological and Chemical Weapons Conventions and the Nonproliferation Treaty. If the parties limit their legislation to territorial and nationality jurisdiction, then weapons of mass destruction may proliferate at sea without recourse. Nothing could be more dangerous to the safety of maritime navigation than the use of ships for the illegal transfer of weapons of mass destruction and other deadly material, as such illegal activity would take place under conditions that by their nature, reflect inadequate regulation and a lack of the proper security required for safe transportation. The high seas and exclusive economic zones should not become a safe haven for weapons of mass destruction.

With respect to the transport offenses, concerns were also expressed that seafarers, owners, charterers, and operators might all be considered potentially liable for actions in respect of which they had no knowledge or control.²⁶ Nevertheless, a majority of delegations favored including such offenses and agreed to consider additional safeguards.

Article 8 *bis* – the shipboarding regime – considered in whole, provides a framework for maritime cooperation based on measures that may be undertaken by a requesting or requested party that respects fundamentally existing international law. It appears to enjoy the support of the committee,²⁷ although its terms are subject to disagreement, in part because of a perceived tension between authorizing such activity and principles of freedom of navigation.

Based on and following the outline provided by the 1988 Vienna Drug Convention²⁸ and the 2000 Migrant Smuggling Protocol to the United Nations Convention on Transnational Organized Crime,²⁹ the primary and overarching intent of 8 *bis* is to create a boarding regime that will meet the needs of the community of nations to protect themselves against terrorism while using the well-settled and traditional rules of international law, such as: ships sail under the flag of one State only, and, except as provided for in international law, are subject to the flag State's exclusive jurisdiction on the high seas.

²⁶ IMO Doc. C 92/6/Add.1, at 3 (Apr. 27, 2004). *Supplementary note*: LEG 89 instructed the Working Group to clarify the term "transports." IMO Doc. LEG 89/16, at 15 (Nov. 4, 2004).

²⁷ IMO Doc. C 92/6/Add.1, at 3 (Apr. 27, 2004).

²⁸ Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, S. Treaty Doc. No. 101-4 (1990), 28 I.L.M. 497, 498-99 (entered into force Nov. 11, 1990) (also available at http://www.unodc.org/pdf/convention_1988_en.pdf).

²⁹ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the U.N. Convention against Transnational Organized Crime, G.A. Res. 55/25, annex I, 55 U.N. GAOR Supp. (No. 49) at 44, U.N. Doc. A/45/49 (Vol. I) (2001) (entered into force Sept. 29, 2003).

Additionally, Parties taking action in accordance with Article 8 *bis* will be obligated to act in conformity with the international law of the sea, including customary international law as reflected in the navigational articles set forth in the Law of the Sea Convention; Parties must respect the sovereignty and jurisdictional rights of the flag and coastal States; Parties must take “due account” to avoid endangering the safety of life at sea or the security of vessels and cargo; and Parties also must respect the commercial and legal interests of the flag or any other interested State.

At the time SUA was negotiated, shipboarding regimes were not the subject of internationally agreed procedures. Such procedures have evolved over the past 14 years, however, first flowing from the injunction article 17 of Vienna Drug Convention and more recently in articles 7 to 9 of the Migrant Smuggling Protocol. Today these procedures are included in a variety of bilateral agreements, including bilateral agreements concerning the Proliferation Security Initiative negotiated by the United States this year with Liberia³⁰ and Panama,³¹ as well as the recently concluded multilateral agreement concerning cooperation in suppressing maritime and air drug trafficking in the Caribbean.³²

8 *bis*, grounded on the notion of international cooperation to which both SUA and these other conventions refer, would provide a mechanism to ensure the purpose of SUA, namely a means of investigation and apprehension that would better guarantee prosecution of offenders under the laws enacted by States Parties in accordance with SUA.

Paragraph 3 of draft article 8 *bis* provides a framework for making and responding to requests to board and search for the purpose of preventing or suppressing conduct proscribed by Article 3. This framework recognizes two separate and distinct events. First, it addresses the initial request to the flag State for permission to board a vessel. Second, it addresses any subsequent requests to take action, which may only occur if evidence is found that the conduct described in Article 3 is, has been or is about to take place aboard the

³⁰ Agreement Between the Government of the United States of America and the Government of the Republic of Liberia Concerning Cooperation to Suppress the Proliferation of Weapons of Mass Destruction, Their Delivery Systems, and Related Materials by Sea (signed and provisionally applied Feb. 11, 2004) available at <http://www.state.gov/t/np/trty/>.

³¹ Amendment to the Supplementary Arrangement Between the Government of the United States of America and the Government of the Republic of Panama to the Arrangement Between the Government of the United States of America and the Government of Panama for Support and Assistance from the United States Coast Guard for the National Maritime Service of the Ministry of Government and Justice (signed and provisionally applied May 5, 2004) (<http://www.state.gov/t/np/trty/>).

³² Agreement Concerning Cooperation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Region, *opened for signature* Apr. 10, 2003.

³³ *Supplementary note*: LEG 89 added a new paragraph providing that the flag State shall have primary right to exercise jurisdiction, a provision supported reportedly by a majority of delegations and committed to the Working Group for further consideration. IMO Doc. LEG 89/16. at 12.

ship. For both events, flag State authorization is to be sought by the requesting Party.³³ Although there is no obligation on the part of the flag State to permit the requested action, all Parties remain obligated to cooperate in preventing the commission of Article 3 offenses.

A consensus was reached at LEG 88 to delete from article 8 *bis* language that would have provided generally for a presumption of flag state authority where a vessel appeared to be either without nationality or subject to the authority of the presumptive flag state, the effect of which would be to permit a requested and apparent flag state to consent to a boarding before confirming or refuting nationality. The decision to delete this practical proposal³⁴ of general applicability is regrettable since experience has shown in other contexts that delays in confirming or denying registry can be substantial, and the need for expeditious action seems more urgent in a terrorism context, and the concept is grounded in evolving State practice.³⁵

Prior to LEG 88, paragraph 3 contained language that would permit generally a requesting Party to board a suspect ship in the event no response was received from the flag State within four hours of the receipt of a request, unless a flag State notified the Secretary-General that requesting Parties would require express authorization to board. This four-hour authorization provision insures prompt boarding that minimizes delay of the suspect ship, allows the early release of the boarding warship or other ship on government service, and addresses the exigencies of a terrorist situation. The four-hour time frame is based on evolving State practice in maritime law enforcement as seen in Article 16.3 of the Caribbean Regional Agreement.³⁶ However, as there was significant opposition to inclusion of the four-hour tacit authorization as the default provision, it will be recast in the next draft of Article 8 *bis* as an option for Parties who wish to exercise this provision.

³⁴ This concept also provides a practical solution with respect to vessels entitled to fly the flag of the claimed flag State, but are not actually required to be on that State's registry. For example, numerous States have exempted pleasure craft from the domestic requirements of registration. In these cases, the only way to verify the vessel's nationality is to examine the vessel's documents. Since the flag State will often be unable to perform this task in a timely fashion, providing authorization for, or not objecting to, the boarding is a practice that efficiently deals with this problem in a manner that is consistent with international law of the sea.

³⁵ The concept and practice of presumptive flag state authority has been explicitly recognized in the United Nations Office of Drugs and Crime newly published PRACTICAL GUIDE FOR COMPETENT NATIONAL AUTHORITIES UNDER ARTICLE 17 OF THE UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, 1988. The provision also would have overcome an inconsistency between Article 17 (paragraphs 3, 4, and 7) of the 1988 Vienna Convention and Articles 91 and 92 of the 1982 LOS Convention.

³⁶ "Upon signing, ratification, acceptance or approval of this Agreement, or at any time thereafter, a Party may notify the Depositary that Parties shall be deemed to be granted authorisation to board a suspect vessel located seaward of the territorial sea of any State that flies its flag or claims its nationality and to search the suspect vessel, its cargo and question the persons found on board in order to determine if the vessel is engaged in illicit traffic, if there is no response or the requested Party can neither confirm nor deny nationality within four (4) hours following receipt of an oral request pursuant to Article 6. The notification can be withdrawn at any time."

There was also considerable discussion over how a vessel might assert nationality. Claiming nationality, claiming the right to fly the flag of a state, and flying the flag, were all considered.³⁷ At LEG 88, there was consensus support for “flying its flag or displaying marks of registry,” which the United States delegation proposed as a compromise during the Working Group. This compromise leaves uncertain the rights and obligations of a boarding State when there is only an oral claim of nationality by those on board the suspect vessel that is not flying a flag or displaying marks of registry. It has been United States practice in those circumstances to ask the claimed flag State to verify the claim.

Additional work also needs to be done to address concerns expressed by some concerning compensation for an unjustified boarding, such as delays or damage to the ship or cargo occasioned by the boarding, and the need to consider carefully the linkage between new offenses and boarding provisions.³⁸

Other matters remaining to be discussed is language relating to safeguards that include arguably the most extensive safeguards to be found in any international convention of its type,³⁹ and language concerning the use of force.⁴⁰ The 1958 High Seas Convention,⁴¹ the Law of the Sea Convention, and the Vienna Drug Convention all lack specific provisions to regulate the use of force when conducting a boarding. What minimal guidance there is can be found in a 1999 decision of the Law of the Sea Tribunal⁴² in which it was said that “the use of force must be avoided as far as possible and, where force is unavoidable, it must not go beyond what is reasonable and necessary under the circumstances.” Article 22(f) of the United Nations Straddling Stocks Agreement⁴³ is also instructive, binding Parties conducting inspections to

³⁷ The title of article 91 of the 1982 LOS Convention – “Nationality of ships” - provides a clear indication that “flying the flag” is a subset of the concept of claiming nationality, as does the text of article 91.1: “Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.” That “flying the flag” is but one way to demonstrate nationality of a vessel is illustrated by article 17.2 of the 1988 Vienna Drug Convention: “A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or marks of registry is engaged in illicit traffic may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.”

³⁸ IMO Doc. C 92/6/Add.1, at 3 (Apr. 27, 2004).

³⁹ Draft protocol, Art. 8 *bis*, para. 8.

⁴⁰ Draft protocol, Art. 8 *bis*, para. 7.

⁴¹ High Seas Convention, Apr. 29, 1958, 13 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82/

⁴² See Case of the M/V *Saiga* (No. 2), at paragraph 155.

⁴³ Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, U.N. GAOR, 40th Sess., U.N. Doc. A/Conf. 164/37 (1995), reprinted in 34 I.L.M. 1542.

“avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.”⁴⁴

The shipboarding regime adds a dimension to SUA that prevents or suppresses illegal acts before they occur, and enhances at the same time the existing purposes of the convention to prosecute offenders. The United States Coast Guard has enjoyed success for over 35 years of successful maritime law enforcement relying on analogous mechanisms, particularly in respect of narcotics, through coordinated shipboarding operations conducted with other nations, such as the UK, the Netherlands, and France with whom we frequently operate in the Caribbean.

The Way Ahead

We live in dangerous times. Nations individually and collectively have expressed in innumerable ways their understanding of the great danger posed by transnational terrorism to international peace and commerce, and to the safety and security of private citizens – and we cannot forget that many nations have suffered at the hands of foreign terrorists in the recent past.

The seafaring nations of the world have a particular obligation to make the oceans safe for navigation and thereby for commerce and personal safety of crews and passengers. SUA was a remarkable and necessary first step. The resolution of the Assembly in 2001 and the discourse concerning amendments to SUA since then reflect the seriousness with which IMO’s member states have taken this issue. The extended and serious consideration of the Amendments within the Legal Committee are a necessary next step in making SUA a more effective tool in our common cause by not only ensuring national legislation that is uniform and consistent, but also by providing tools to prevent and suppress illegal acts as they are committed. The intersessional meeting this July also reflects an appropriate sense of urgency so that a

⁴⁴ *Supplementary note:* LEG 89 adopted a formulation similar to these examples, and provides that use of force “shall not exceed the minimum degree of force which is necessary and reasonable in the circumstances.” IMO Doc. LEG 89/16, at 13 (Nov. 4, 2004).

⁴⁵ *Supplementary note:* The report of LEG 88 was noted by the Council during its June 21-25, 2004, meeting which “reaffirmed the Legal Committee’s mandate to continue its work on the SUA protocols in accordance with resolution A.924(22).” IMO Doc. C 92/SR.3, at 4 (June 22, 2004). The Intersessional Legal Committee Working Group met July 12 to 16, 2004, and made substantial progress on the draft protocols. *See* IMO Doc. LEG/SUA/WG.1/3 (July 26, 2004). LEG 89 met from Oct. 25 to 29, 2004 and consideration of the SUA draft protocols was its first priority. IMO Doc. LEG/89/16, at 4 (Nov. 4, 2004). The Working Group met in parallel and the Committee took up extended discussion of the draft protocols, focusing in the first instance on the boarding regime in art. 8 *bis*. Ultimately, the Committee adopted many of the Working Group’s recommendations, but returned a number of issues for further consideration. LEG 89 decided the Working Group would meet again from Jan. 31 to Feb. 4, 2005, and LEG 90 would devote the week of Apr. 18-22, 2005, to finalizing the draft protocols. *Id.*, at 32.

workable document can emerge from the Legal Committee for the consideration of a Diplomatic Conference in 2005.⁴⁵

CMI's contributions to this continuing dialogue have been substantial, and its endorsement of an international consensus that a revised convention would provide is important to point the right way for national legislation in the nations of the world that in total will serve the interests of international peace and security.⁴⁶

⁴⁶ *Supplementary note:* The CMI Assembly adopted a resolution at its June 4, 2004, meeting that "endorses and commends the work of the Legal Committee, . . . [and] fully supports the extension of the scope and applicability of the Convention to prohibit and suppress both acts of terrorism against, on, or from ships, and the maritime transport of weapons of mass destruction, and the endeavour to accomplish these objectives whilst respecting and securing the rights of innocent seafarers and the obligations of States Parties to protect their sovereign and commercial interests." IMO Doc. LEG 89/4/7 (Sept. 24, 2004).

F. CRIMINAL OFFENCES

RESOLUTION CONCERNING AMENDMENT OF THE SUA (ROME) CONVENTION, 1988

BE IT RESOLVED BY THE ASSEMBLY OF THE COMITÉ MARITIME INTERNATIONAL, MEETING IN VANCOUVER, BC, CANADA, ON 4TH JUNE 2004, AS FOLLOWS:

The Comité Maritime International endorses and commends the work of the Legal Committee of the International Maritime Organization in formulating amendments to the **Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation** and its **Protocol**, done at Rome on 10th March, 1988. The CMI fully supports the extension of the scope and applicability of the Convention to prohibit and suppress both acts of terrorism against, on, or from ships, and the maritime transport of weapons of mass destruction, and the endeavour to accomplish these objectives whilst respecting and securing the rights of innocent seafarers and the obligations of States Parties to protect their sovereign and commercial interests.

G. POLLUTION OF THE MARINE ENVIRONMENT

COMMENTS MADE BY GR. J. TIMAGENIS AT THE CMI VANCOUVER CONFERENCE ON THE TOPIC: POLLUTION OF THE MARINE ENVIRONMENT – PROPOSED REVISION OF THE CLC AND FUND CONVENTIONS

I make these comments from my experience as Deputy Chairman on the Implementation of the International Convention. My comments in their majority are of a more general nature rather than on the specific issues concerning the Fund Convention.

1. The Problem not unique to the Fund Convention

My first comment is that the problem of lack of uniform implementation is not unique for the Fund Convention. Similar problems appear in almost all International Conventions and especially those which should be implemented and applied within the Member States. Perhaps we have to admit that it is impossible to achieve complete uniformity. This may be a comfort for all those concerned with the lack of uniformity but not a reason not to try to improve the uniformity.

2. Ratification Laws

There are various reasons of the lack of uniformity. The first is arising from the national laws which give effect to the International Conventions. There are generally two systems. Under the one system the whole text of the Convention becomes a part of the national law. Under the second system a national law is enacted and tries to give effect to the Convention, without actually incorporating the full text of the Convention in the national legislation. This second system is a basic cause of lack of uniformity because the national courts do not apply and/or interpret the actual text of the International Convention but the text of the national law. In addition the transformation of the International Convention (which is frequently the result of delicate compromises) is made by civil employees who do not always appreciate the significance of certain clauses of the Convention or they try to adjust its contents to the national legislation or habits. Of course, the method of incorporating the International Convention into the national law is a matter which is determined by the national constitution and consequently it is very difficult to ask various States to follow the same system. One way which could reduce this problem is to include in the International Convention itself (or in the amendments of the Convention) a provision requiring the whole text of the Convention to become part of the national law of the Member States. Of course, supplementary, subordinate or implementation provisions may be adopted in the national law but at least the starting point should be the actual

text of the Convention. In order to achieve this care should be taken in the course of the negotiations to include such a clause in the Convention.

3. National Laws and Courts

A second cause of the lack of uniformity is the interpretation and application by the national Courts. Of course, it is impossible to impose on a national court a uniform interpretation (more so, if one takes into account my next comment under 4). More importantly, the national courts are obliged to apply their national law on issues which are not covered by the Convention but relate to the application of the Convention. I give one example only in order to illustrate the problem. The example is the time limit or the time bar. If the Convention does not include a provision about the time bar of various rights and obligations arising out of the Convention in favour or against individuals, it is obvious that the national courts will apply their national law on this issue. Even if, however, there is a time limit in the Convention itself the rules about the exact time when the time limits start or end or they are suspended for various reasons will be regulated by the national law of the court which has a dispute before it. One remedy for this might be to identify issues on which the national laws are applicable (like time bar or suspension of time limits, etc.) and to include the relevant provisions in the Convention itself thus reducing the possibility of lack of uniformity. This kind of provisions could become more or less a standard feature of an International Convention like the provisions on the acceptance, ratification, denunciation, etc. A relevant issue which creates lack of uniformity even within the same Member States is the possibility of referring issues concerning the Convention to more than one national courts. This is something which may be also prevented by the Convention itself. That is the Convention may include provision that all the issues arising from the Convention should go to one court in every state or (because this may not possible as it could create problems to the citizens in having recourse to the courts) to one court of appeal in order to have at least a uniform interpretation within the same state.

4. Imprecise language and lacunas in the Conventions

Further, it should be noted that the lack of uniformity arises frequently from the Conventions themselves. Their language is frequently not sufficiently precise. This sometimes is inevitable due to the method of creation of the International Convention and due to the need to achieve certain political compromises. One way to reduce this problem might be the Conventions to provide that a body (especially where they create a body for the implementation of the Convention, like for instance the assembly of the fund) has the authority to decide on clarification points or subordinated rules for the application of an International Convention. Referring specifically to the fund, my impression is that the assembly does take occasionally such decisions which are frequently followed by the States as a matter of policy. However, there is no basis in the Convention granting such authority to the assembly and consequently, when the application of the Convention comes

before a national court, the resolutions of the assembly cannot be taken into account, because they are simply the views of the Fund (of the organs of the fund) which cannot be compulsory or even have an advisory value to the national courts in a dispute of the Fund with the third party (the views of the assembly are simply the views of the one party involved in the dispute).

5. The problem with the Amendments

The weaknesses of the Conventions cannot necessarily be remedied by amendment. Amendments in some cases may be inevitable. However, they may create even worse lack of uniformity because it is not certain which States are going to ratify the amendments and consequently, in addition to the lack of uniformity of the interpretation and application of the Convention, we may have two official regimes (or even more than two official regimes) which apply depending on the countries which are parties to the original Convention or to the amendments. One method to reduce the diversity from the amendments is for the Convention itself to include provisions on tacit acceptance. The experience shows that the various States have much bigger difficulty in ratifying amendments, if they are obliged to take active legislative measures to this effect (i.e. pass a law through the national parliament) rather than when the amendments come into effect by default. Even amendments which are acceptable to States take long time to be ratified and be given effect if legislative action is required for their ratification. On the contrary the tacit acceptance procedure helps more quick acceptance of the amendments (while States objecting are given the chance to notify their objection and thus not adhere to the amendment).

6. Places of Refuge

Now referring to the Civil Liability and the Fund Conventions I should draw your attention to the fact that in another group of this Conference we are discussing the issue of Places of Refuge. This issue has aspects which relate to Civil Liability and possibly the creation of a fund to cover situations which cannot be covered otherwise. In this connection, the Civil Liability Convention and the Fund Convention may be amended/expanded to cover this function as well. Alternatively, any new fund for Places of Refuge may be managed by the same mechanism which already exists for the Fund Convention. I do not suggest this as an issue to be considered at this stage of consideration of amendments to these Conventions. However, this issue (places of refuge) should be kept in mind as something which may be upcoming in the future.

7. Possible CMI guidelines

Finally, because CMI has a very long experience in the effort for the unification of international maritime law and on the implementation of the unification Conventions, I believe that CMI may be an appropriate body for creating a set of rules for enhancing and improving the uniform implementation of International Conventions. These rules which may be

created by CMI will be a set of non binding, non compulsory rules which, however, may be at the disposal of the international (intergovernmental) conferences, organizations and international bodies deliberating the adoption or amendment of an International Convention. This optional CMI implementation rules will serve as a check list for the bodies negotiating Conventions. The rules should be before them but it will be up to them to accept or not accept certain of the rules or the solutions proposed by CMI. It will be used as an *aid memoir* for the negotiators to remember these issues and it will be up to them to decide whether they want to take some of the CMI advice or not. In this connection, I intend to propose to CMI Executive Council to put into its agenda such a subject and start working on this. I believe that CMI should not expect only requests from IMO or other international organizations for assistance or co-operation but it may take the initiative on issues which CMI identifies as requiring work and present the results of its work to IMO and the other international organizations like United Nations, UNCITRAL, etc.

8. Although, I have certain ideas on the specific issues for the amendment of the Fund Convention I do not feel it being worth entering on these issues at the moment and I hope that my general comments may be of some help. I thank you Mr Chairman.

H. OFFSHORE

MINUTES OF THE WORKING GROUP CONSIDERING THE NEED FOR AND FEASIBILITY OF AN OFFSHORE UNITS CONVENTION

Present:

Richard Shaw, Chairman	William Sharpe,
Edgar Gold, Q.C.	Michael White, Q.C.
Nigel Frawley	Hisashi Tanikawa

1. The International Working Group met over lunch at Vancouver on June 4, 2004 on the occasion of the CMI Conference.
2. A Draft Convention prepared by the Canadian Maritime Law Association, complete with a Narrative of events starting with the Rio de Janeiro Draft of 1976 and a Commentary on provisions of the Draft Convention, had been previously circulated to the Working Group. Nigel Frawley and William Sharpe explained that they had provided this documentation to Francesco Berlingieri, with the consent of the President of the CMI, in recent weeks for the purposes of their being published in a CMI Yearbook. Apparently, Mr. Berlingieri was keen on this as it was feared that all the work we had done over the years would be lost and forgotten. It was recalled that the International Sub-Committee on this topic of regulation of the Offshore Industry had been disbanded owing to the fact that the subject had been taken off the work agenda of the IMO, and the opposition of the International Association of Drilling Contractors and the USMLA.
3. The Chairman thanked Nigel Frawley and William Sharpe for their work and invited comments from the Working Group on the Draft Convention. He suggested that written comments be sent to William Sharpe by early July, 2004. Michael White's initial thoughts on the Draft Convention were that the Pollution Section should be more detailed.
4. It was agreed that if anyone else with an interest in this subject wishes to join the Working Group they should be invited to do so.
5. The Chairman advised that he was still working on the latest edition of Summerskill and Shaw on Off Shore Rigs. He will consider including the Canadian draft in it.
6. There was discussion on the future of the International Working Group. It was decided that it should be kept active and that we should meet on convenient occasions as they arise. Richard Shaw agreed to remain as Chairman. There was a feeling that the meetings in the future would be to improve the Draft Convention and keep abreast of developments in case there is an oil rig catastrophe and a request by the IMO to the CMI to look into regulation of the off-shore.

Offshore

7. The Chairman said it was pointless to try to get the subject on the IMO work agenda at the present time, but that we should keep Dr. Rosalie Balkin, Director of External and Legal Affairs of the IMO, informed of our work. It was also felt that because of the opposition of the USMLA to our work, we should not give the impression that they are left out of our discussions. Indeed, it was felt that they are welcome to join our working group at anytime. Richard Shaw said that he would report to the CMI assembly on the work we were doing.

8. At the urging of Michael White, William Sharpe undertook to write an article on this subject for the Journal of International Maritime Law.

9. Edgar Gold said that he would be in Oslo in mid June as he has been asked by the Gard P & I Club to write a chapter for the 3rd edition of their Handbook on Oil and Gas, as well as offshore environmental questions. He will consider making reference to our work.

10. The meeting was adjourned after lunch.

NIGEL H. FRAWLEY
Rapporteur

RICHARD SHAW
Chairman

June 30, 2004

Post Meeting Notes:

1. Richard Shaw reported verbally on our work to the CMI Assembly on June 5, 2004.

2. Ms. Mfon Ekong Usoro, a partner with Paul Usoro & Co. in Lagos, Nigeria, approached Nigel Frawley following Richard Shaw's report and asked to join our International Working Group. This was gladly accepted and copies of our recent materials have been sent to her.

3. Francesco Berlingieri published our materials in CMI News Letter No.1 - January/April 2004.

4. Ms. Giorgia Boi of the Italian MLA e-mailed Nigel Frawley following the CMI Conference to advise of her continuing interest in being in the Working Group.

5. Richard Shaw prepared a Report on our meeting for inclusion in the CMI News Letter or the Vancouver 2 Year Book.

NIGEL H. FRAWLEY

REPORT OF THE CMI WORKING GROUP ON OFFSHORE MOBILE CRAFT

During the CMI Conference at Vancouver in May-June 2004 the opportunity was taken for an informal meeting of this group on Thursday 3rd June. Present were Messrs Nigel Frawley, Edgar Gold and William Sharpe (Canada), Prof. Hisashi Tanikawa (Japan), Michael White QC (Australia), and Richard Shaw (UK) in the chair. It was recognised that since the IMO Legal Committee at its meeting in October 2001 removed this subject from the work programme due to the pressure of other work, the CMI Executive Council had decided to incur no further expenditure on this topic for the moment, but had no objection to the Working Group continuing in existence. The Canadian Maritime Law Association has prepared a draft international instrument and a commentary on its clauses, and these documents, together with a helpful summary of the present position, was tabled at the meeting. It was agreed that the working group should remain in contact, and that the Chairman would mention this subject at the Plenary Session of the Conference, and would invite any delegates of National Maritime Law Associations with an interest in this work to contact either Mr Frawley nhfrawley@earthlink.net or Mr Shaw Richard.Shaw@soton.ac.uk.

Mr Shaw reported accordingly to the Plenary Session. It is hoped that it will be possible to include the documents tabled in the Vancouver II Yearbook.

RICHARD SHAW

I. SALVAGE

IMPLEMENTATION OF THE SALVAGE CONVENTION 1989

STATES PARTIES TO THE SALVAGE CONVENTION*

Australia	Lithuania
Canada	Marshall Islands
China (Hong Kong)	Mauritius
Croatia	Mexico
Denmark	Netherlands
Dominica	New Zealand
Egypt	Nigeria
Estonia	Norway
France	Oman
Georgia	Romania
Germany	Russian Federation
Greece	Saudi Arabia
Guinea	Sierra Leone
Guyana	Sweden
Iceland	Switzerland
India	Syrian Arab Republic
Iran (Islamic Republic of)	Tonga
Ireland	Tunisia
Italy	United Arab Emirates
Jordan	United Kingdom
Kenya	United States
Latvia	Vanuatu

* The States appearing in bold type have sent their responses to the Questionnaire.

SYNOPSIS OF THE RESPONSES TO THE QUESTIONNAIRE***received as at June 17, 2004*

* * *

1. *What type of national instrument has authorized the ratification of or accession to the Salvage Convention 1989?*

Ratification or accession has been authorized by a law in **Croatia, France, Germany, Greece, Italy, Lithuania, Mexico, Netherlands and Russian Federation.**

In **Australia** ratification of or accession to a convention does not, in itself, require the authority of the Parliament. An Act of Parliament is, however, required in order that the provisions of a convention become binding on individuals and it has been the practice of Australian governments to ensure that any necessary legislation is in place before ratification or accession. In **New Zealand** the provisions of the Convention were incorporated into national law by the Maritime Transport Act 1994 which provided for such provisions to be brought into force by Order in Council. This was done on 16 October 2003, the date of entry into force of the Convention for New Zealand, the instrument of accession having been deposited on 16 October 2002.

In **China** accession to the Convention has been authorized in the Fifth Session of the Standing Committee of the Eighth National People's Congress of the People's Republic of China.

In **Latvia** ratification has been authorized by an Ordinance of the Cabinet of Ministers.

In **Norway** ratification has been authorized by a Royal Decree; prior to the governmental authorization, the Parliament had approved ratification by Act of 2 August 1996, No. 61 amending the Norwegian Maritime Code of 24 June 1994.

The **United Kingdom** government acceded to the Convention on 29th September 1994. In the United Kingdom the power to make or ratify such international conventions belongs to the Crown and for that reason the acts of accession and ratification did not require authorisation. Legislation was, however, required subsequently to ensure that the Convention was enforceable in the English courts, and the effect of an order made pursuant to section 1 of the Merchant Shipping (Salvage and Pollution) Act 1994 (now section 224 of the Merchant Shipping Act 1995) was that the Convention became part of English law on 1st January 1995, prior to the Convention coming into force internationally.

** This Synopsis has been prepared by Francesco Berlingieri.

Salvage

In the **United States** ratification has been authorized by resolution of advice and consent by the Senate agreed to on 29 October 1991.

2. *Has your country made any of the reservations permitted by article 30(1) of the Convention?*

The following States have reserved not to apply the Convention in one or more of the circumstances mentioned in article 30:

- Article 30(1)(a): **Australia, China, France, Lithuania, Mexico, United Kingdom.** Mexico impliedly withdrew its reservation by incorporating the Convention in its national law without any restriction.
- Article 30(1)(b): **Australia, China, Croatia, France, Lithuania, Mexico, United Kingdom**
- Article 30(1)(c): none
- Article 30(1)(d): **Australia, Canada China, Croatia, France, Greece, Iran, Netherlands, Norway, Russian Federation, Saudi Arabia, Spain, Sweden and United Kingdom**

No reservation was made by New Zealand.

It is questionable that the formula “reserve the right not to apply ...” entails the automatic exclusion of the relevant provision in respect of the State that has made the reservation.

In **France** it has been held that this is not so in respect of the LLMC Convention 1976 by the Cour d’Appel of Bordeaux with judgment of 5 September 1997 (1998 DMF 591) and by the Cour d’Appel of Rouen with judgment 5 September 2002 (2003 DMF 55).

In **Australia** the decision not to apply the provisions of the Salvage Convention in the cases mentioned in article 30(1) is the responsibility of the State and Territory governments. The reservations have been made to ensure that, in the event of a State or Territory governments electing not to apply the Convention in these circumstances, Australia would not be in breach of its Convention obligations.

In the **United Kingdom** the right not to apply the provision of the Convention has actually been exercised only in respect of article 30(1)(a) and (b) while it has not been exercised (at least so far) in respect of article 30(1)(d).

3. *Have the provisions of the Convention as such been given the force of law or have its provisions been incorporated in the law of your country?*

The incorporation technique entails of course certain changes in the wording of the national rules, so that such rules differ to some extent from those of the Convention, and this in turn may entail a greater difficulty of ensuring a uniform interpretation. It is not possible in this synopsis to compare for each Contracting State that has followed this technique the text of the national provisions with those of the Convention. As an example, however, such comparison is made for **Australia**. From section 315 of the

Implementation of the 1989 Salvage Convention

Navigation Act it appears that Australia has given the force of law only to some (albeit the more important) provisions of the Convention but that articles 1 to 5, 9 to 11, 20, 24, 25 and 27 have not been given the force of law. In respect of some of such provisions it must be considered that since the ratification of or accession to a convention is regarded as binding Australia under international law, the obligations of the government itself do not require legislation. This is the case for article 11 of the Convention. From the review of the Navigation Act 1912 it further appears that:

- the definitions in art. 1 from (a) to (e) are reproduced verbatim (except a minor change relating to “payment”) in section 294(1);
- art. 2 is reproduced in section 316(1) save the exclusions set out in section 316(2) and (3);
- art. 3 is reproduced, albeit with a slightly different language, in section 316(2);
- art. 4 is replaced by section 329(B) of the Act;
- art. 5 is replaced by section 329(C) of the Act;
- art. 9 consists in a clarification relating to the rights of Coastal States and therefore its enforcement does not seem to be necessary;
- art. 10(1) is replaced, with not significant changes in the wording, by section 317(A)(1) of the Act;
- art. 10(2) is complied with by section 317(A)(2) of the Act and art. 10(3) is given effect to by art. 317(A)(3);
- art. 23 is given effect by section 396 of the Navigation Act which provides in its paragraph (1), that: “*No action shall be maintainable to enforce any claim or lien against a ship or its owner in respect of ... any salvage services, unless proceedings therein are commenced within 2 years from the date when ... the salvage services rendered were terminated*”.

The provisions of the Convention have been given the force of law in **Croatia, France, Greece** (law 2391/1966), **Italy, Lithuania, Netherlands, New Zealand, United Kingdom and United States**.

They have been incorporated, in whole or in part, in an existing Code or Act in **Australia** (section 315-329 of the Navigation Act 1912, as amended), **China** (articles 171-192 of the Maritime Code), **Denmark** (Chapter 16, Sections 441 to 454 of the Danish Maritime Act; the incorporation was made pursuant to statute no. 205 of 29 March 1995), **Germany** (articles 740 to 753 HGB as amended by Gesetz zur Neuordnung des Bergungsrechts in der See- und Binnenschiffahrt (Drittes Seerechtsänderungsgesetz) of 16 May 2001), **Latvia** (Maritime Code adopted on 29.05.2003 and Maritime Administration and Safety Law adopted on 30.10.2002), **Mexico** (art. 125 of the 1994 Navigation Act so provides: “*All salvage operations and the rights and responsibilities of the parties shall be governed by the International Convention on Salvage*”), **Norway** (Chapter 16 of the Norwegian Maritime Code of 24 June 1994, as amended by Act of 2 August 1996, No. 64) and the **Russian Federation** (Chapter XX of the Merchant Shipping Code). **Poland**, whose ratification is still pending, has already incorporated in its Maritime Code most of the provisions of the Convention.

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The Convention has not been implemented yet by **Nigeria**. A Maritime Law Reform Committee was established in 1999 by the Federal Minister of Transport with the task to update the entire corpus of Nigerian maritime legislation, including a new Merchant Shipping Act which incorporates the Salvage Convention. The draft prepared by such Committee is being considered by the National Assembly. Until the enactment of the new Merchant Shipping Act, salvage will remain governed, in Nigeria, by the 1910 Convention.

4. *If the provisions of the Convention have been given the force of law, or incorporated in the law of your country*
 4.1. *by which instrument this has taken place?*

In all States where the provisions of the Convention have been incorporated into an existing Code or Act, this has been done by an act.

In **Australia** the legislation necessary to implement its obligations under the Convention was contained in the *Transport Legislation Amendment Act 1995*, which amended Part VII of the *Navigation Act 1912* to incorporate the terms and principles of the Convention. The legislation received Royal Assent on 27 July 1995.

In **China** accession to the Convention has been authorized in the Fifth Session of the Standing Committee of the Eighth National People's Congress of the People's Republic of China.

In **Croatia** the force of law has been given by the law enacted by the House of Representatives of the Croatian Parliament of 5 June 1998, published in the People's Gazette, International Treaties, No. 9/1998.

In **France** the force of law has been given to the provisions of the Convention by the law of 30 January 2001 that authorized the ratification, and they became effective on December 20, 2002, the instrument of ratification having been deposited on December 20, 2001 with the Depositary, and the Convention published in the *Journal Officiel de la République Française* dated April 30, 2002, as requested by article 55 of the French Constitution.

In **Germany** the legislation necessary to implement its obligations under the Convention was contained in the "Drittes Seerechtsänderungsgesetz".

In **Greece** force of law has been given by law no. 2391/1966.

In **Italy** the force of law has been given by law 12 April 1995, No. 129 that authorized the ratification, which became effective upon the instrument of ratification having been deposited with the Depositary, the Convention becoming effective pursuant to its article 29.

In **Lithuania** the force of law has been given by the Act by which the Parliament authorized the ratification of the Convention.

In **New Zealand** section 216 of the Maritime Transport Act 1994 provides that the Convention (which is set out in the Sixth Schedule to the Act) has the force of law.

In **Norway** the amendments to the Maritime Code required in order to give effect to the Convention were made by Act of 2 August 1996, No. 61. In the **United Kingdom** section 224 of the Merchant Shipping Act 1995.

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In the **United States** Section 40, Amendments to Implement International Salvage Convention, 1989, of Public Law 102-241, Dec. 19, 1991, amending 46 App. USC 729 and 731.

4.2. have the national rules on salvage previously in force been expressly abrogated or have they remained in force in respect of areas, if any, to which the Convention does not apply?

The pre-existing rules have not been expressly abrogated in **France, Germany, Italy, Mexico, New Zealand, Russian Federation** and the **United Kingdom** but the general rule seems to be that in case of conflict the provisions of the Convention shall prevail.

They have been replaced by those of the Convention in **Australia**, where reference to the Salvage Convention in the Navigation Act 1912 have been replaced by references to the Salvage Convention 1989, in **China** (article 268 of the Maritime Code so provides: *"If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those contained in this Code, the provisions of the relevant international treaty shall apply, unless the provisions are these on which the People's Republic of China has announced reservations"*), in **Denmark** and in **Poland**.

In **Croatia** the provisions on salvage existing at the time the Convention was given the force of law (contained in the Maritime Code of 1994 in respect of salvage at sea and in the Inland Waters Navigation Act of 1998 in respect of salvage in inland water have not been expressly abrogated and are still in force in respect of areas to which the Convention does not apply. It is important to note however that the national rules on salvage accept certain important features of the 1989 Salvage Convention. With effect from 16 March 2001, Croatia denounced the 1910 Salvage Convention.

In **Greece** the International Convention of 1910 which was ratified has not been denounced. The relevant provisions of the Greek Code of Private Maritime Law, which were formerly in force, have not been repealed; therefore they still remain in force in respect of areas, if any, to which the Convention does not apply.

In **Lithuania** salvage in inland waters continues to be governed by the Inland Waters Transport Code.

In **Norway** some provisions are still in force, for instance Act of 20 July 1893 No. 2 on Stranded Ships and Wrecks and Act of 3 of June 1983 No. 40 Articles 29-32 on Salt Water Fisheries. These provisions partly deal with the same issues as the Convention. However, all provisions on salvage in the Maritime Code that previously regulated this field have been amended after the ratification. In case of conflict between the different set of rules, the provisions in the Maritime Code would probably prevail.

In the **United States** the pre-existing rules remain in force with respect to those substantive areas to which the Convention may not apply.

5. *If the reservation under Article 30(1)(a) and/or (b) has not been made, is it accepted in your country that the provisions of the Convention apply also when the salvage operation takes place in inland waters and all*

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vessels involved are vessels of inland navigation and/or when the salvage operations take place in inland waters and no vessel is involved?

The provisions of the Convention apply also when the salvage operation takes place in inland waters and all vessels involved are vessels of inland navigation and/or when salvage operations take place in inland waters and no vessel is involved in **Denmark** (provided the operations take place in navigable waters), **Germany, Italy, Latvia, Netherlands** and the **Russian Federation**.

In **Croatia** the reservation under Article 30(1)(a) has not been made, and therefore the Convention presumably applies when the salvage operation takes place in inland waters and all vessels involved are vessels of inland navigation. Croatia made instead the reservation under Article 30(1)(b). However, certain Convention principles should apply through the national law.

In **Greece** this question has never been considered because the country has very limited inland navigation.

In **New Zealand** application to inland waters with or without vessels has been accepted by full text incorporation of the text of the Convention and by virtue of the definition of "Coast or inland waters" in section 215 of the Maritime Transport Act 1994.

In **Norway** no reservation has been made in respect of these articles. The Maritime Code Section 441 a) defines salvage as "any act the purpose of which is to render assistance to a ship or other object which has been wrecked or is in danger in any waters". According to the wording, the provisions apply to *in any waters*. Letter d) of the same section includes inland waters in the scope of potential environmental damage. Consequently, the provisions in the Maritime Code seem to apply to inland waters. This question has not yet been considered in Norwegian case law.

In **Poland** the provisions of the Convention, as incorporated in the Maritime Code, apply to salvage operations performed in inland waters only if a seagoing vessel is involved.

In the **United States** presumably, the provisions of the Convention do apply when salvage operations take place in inland "navigable waters of the United States" (as defined for determining admiralty jurisdiction), whether all the vessels involved are vessels of inland navigation or even when no vessel is involved.

Reservation has been made by **China** and article 171 of the Maritime Code so provides: "*The provisions of this Chapter shall apply to salvage operations rendered at sea or any other navigable waters adjacent thereto to ships and other property in distress*".

6. *If the reservation under article 30(1)(d) has not been made:*
 - 6.1. *is it accepted in your country that the provisions of the Convention apply even when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea bed?*

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As regards the question whether the States that have not made the reservation permitted by article 30(1)(d) would apply the provision of the Salvage Convention to maritime cultural property, this seems to be the case for **Germany, Latvia, Lithuania, Mexico, United Kingdom.**

In **Greece** (by which a reservation has been made in respect of article 30(1)(d)) there are special provisions in respect of salvage of ancient ships and their cargo both inside or outside the ship.

The position is not settled in **Italy.**

In **New Zealand** reservations exist as to whether the salvage convention is applicable to wrecks that have been on the seabed for many years, given the reference to “assist a vessel or any other property in danger in navigable waters” in the definition of salvage operations. However this possibility is not ruled out.

In **Norway** pursuant to section 442 of the Maritime Code the provisions of the Convention, as enacted in the Maritime Code, do not apply to ships or objects covered by section 14 of Act 9 June 1978, No. 50 concerning Cultural Heritage.

In the **United States** the answer to this question may be either yes or no depending upon a number of factors such as the identity of the owner, the kind and location of the property, and whether the general federal maritime law of salvage applies.

In **Poland**, the provisions of the Convention, as incorporated in the Maritime Code, do not apply to maritime cultural property situated on the sea bed because a requisite of salvage is an existing danger.

6.2. Has your country ratified the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage or is it your country's intention to ratify it?

None of the States in respect of which responses to the Questionnaire have been given has ratified the UNESCO 2001 Convention. While **Denmark** and **France** have a “positive view” on that Convention, **Norway** and the **United States** seem to have no intention to ratify the UNESCO Convention. The convention is not ratified by **Norway**. Norway has previously expressed concerns regarding the relationship between the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage and UNCLOS Convention. At present, Norway has no intention to ratify the UNESCO Convention.

7. Does the term “property”, as defined in article 1(c) cover sunken ships and other property, whether or not inside a sunken ship?

The answer is affirmative in respect of **Australia, Denmark** (except perhaps property that has no relation with shipping), **Germany, Italy, Latvia, Lithuania, Netherlands, New Zealand, Norway, Poland, United Kingdom** and **United States.**

In **Croatia** under national rules, removal of sunken objects is expressly distinguished from salvage and is subject to a special set of rules. Sunken

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objects (whether or not inside a sunken ship) are covered by the rules on salvage only if they sank during the salvage operations or during the period of danger that existed immediately prior to the commencement of the salvage operations.

In **France** the Convention would apply if the sunken property is in danger. If it is not in danger, the domestic provisions on salvage of wrecks would apply.

In **Greece** it has been argued that the term “property” (1(c)) includes sunken ships, shipwrecks or cargo wrecks, lying either within or outside a shipwreck.

In **Russia** there are special provisions on raising, removal and destruction of sunken property in Chapter VII of the Merchant Shipping Code. If, however, the raising, removal or destruction is considered to be a salvage operation, the rules that implemented the Convention would apply.

8. *Has your country extended the scope of application of the provisions of the Convention to:*

(a) platforms and drilling units;

The scope of application of the Convention has been extended to platforms and drilling rigs by **Norway**. The Norwegian Maritime Code Section 442 paragraph 4 states that the provisions do not apply to permanent platforms and pipelines for the petroleum industry. However, the scope of application includes *movable* installations for the petroleum industry.

In **China** article 173 of the Maritime Code so provides: “*The provisions of this Chapter shall not apply to fixed or floating platforms or mobile offshore drilling units when such platforms or units are on location engaged in the exploration, exploitation or production of sea-bed mineral resources*”.

In **Croatia** the issue seems to depend on whether a platform or a drilling unit is capable of navigation (in which case it is considered as “technical vessel” and is covered by the rules on salvage) or not (in which case it is considered as “floating object” and is not covered by the rules on salvage).

The position is the same in **Greece** and **Lithuania**.

In **New Zealand** the Convention has not been extended to platforms and drilling units.

In **Poland** the provisions of the Convention, as incorporated in the Maritime Code, do not apply to platforms and drilling units. They instead apply, pursuant to article 249 of the Maritime Code, to ships of the Navy, Coast Guard and Police.

(b) warships and other non-commercial vessels, owned or operated by the State?

The scope of application of the Convention has been extended to warships and other non-commercial vessels, owned or operated by the State, by **Denmark** (s. 454 of the Maritime Act), **Latvia** (art. 253 Maritime Code), **Netherlands** (in accordance with the provisions of article 554, Book 8, Civil Code), **New Zealand** (section 217 of the Maritime Transport Act 1994), **Norway**, **Russian**

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Federation (except for the provision on apportionment of the salvage reward) and the **United Kingdom** (pursuant to section 230 of the Merchant Shipping Act 1995, but subject to section 29 of the Crown Proceedings Act 1947). They have not been so extended in **China, Greece, Lithuania** and in the **United States**. See for **China** the definition of ship in article 172(1) (“‘Ship’ means any ship referred to in Article 3 of this Code and any other non-military, public service ship or craft that has been involved in a salvage operation therewith”) and for the **United States** see Department of State Public Notice 4614, entitled “Office of Ocean Affairs; Protection of Sunken Warships, Military Aircraft and Other Sunken Government Property” [Federal Register: February 5, 2004 (Volume 69, Number 24, pages 5647-5648)].

In **Croatia**, under the national law, the rules on salvage apply to all vessels irrespective of type and purpose (including warships and state-owned vessels), with certain exceptions: (i) the rules dealing with the rights of the crew to participate in the salvage reward do not apply to warships; (ii) salvage of a Croatian warship shall not be performed if expressly prohibited by the master of that ship; (iii) the Minister of defence shall regulate in which circumstances the master of a Croatian warship is exempted from a duty to render salvage services.

9. *Have provisions been enacted in order to entitle public authorities that perform salvage operations to avail themselves of the rights and remedies provided for in the Convention?*

Public Authorities that perform salvage operations may avail themselves of the rights and remedies provided for in the Convention in **Australia, China** (article 192 of the Maritime Code), **Denmark, Germany, Italy, Lithuania** (article 40 of the Law on Safe Navigation, 29 August 2000), **Mexico, Norway** (subject to the rules otherwise applicable; such rules being those contained in the Act of 13 March 1981, No. 6 relating to protection against pollution and relating to waste¹), **Netherlands, Poland, Russian Federation** and **United Kingdom**.

¹ Pursuant to s. 74, if the Pollution Control Authority has issued orders pursuant to Section 7 fourth paragraph or pursuant to Section 37 first or second paragraph, which are not complied with by the party responsible, the Pollution Control Authority may itself provide for the implementation of the measures. The pollution control authority may also provide for implementation of measures without prior instructions if such instructions may mean that implementation of the measures will be delayed or if it is not clear who is responsible. When implementing measures in accordance with the first paragraph the pollution control authority may make use of, and if necessary cause damage to, the property of the person responsible. The Pollution Control Authority may issue specific regulations concerning the implementation of measures in accordance with the first and second paragraphs. Intervention against acute pollution or danger of acute pollution on the open sea and in outer Norwegian sea territory shall take place in accordance with international agreements to which Norway has acceded. The pollution control authority may issue regulations concerning such intervention and concerning the implementation of such agreements in Norwegian law. The Pollution act is available in English full text at the following site: http://www.npd.no/regelverk/r2002/Forurensingsloven_e.htm

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In **New Zealand** no specific legislation has been made dealing with this issue. The view has been expressed, however, that the effect of incorporating article 5 directly in legislation is to permit public authorities to avail themselves of the rights and remedies under the Convention.

In the **United States** no provisions have been enacted that would specifically extend the rights and remedies of the Convention to public authorities performing salvage operations (e.g., Coast Guard, Navy); however, such public authorities have had, and still retain, analogous rights and remedies as salvors under the common maritime law of salvage; in addition, as a matter of internal U.S. government fiscal law, the provisions of 10 USC Sections 7363 & 7364 (which pre-date the Convention) recognize the right of the U.S. Navy to independently assert, receive and utilize salvage awards for salvage operations it has performed.

In **Croatia** since there are no specific provisions in this respect, public authorities should enjoy to the full extent the rights and remedies provided for in the Convention (except as stated in the response to question under 8(b) under (i)).

Also in **Greece** there are no specific provision, but it is unsettled whether the State is entitled to a reward for salvage, the prevailing view being negative.

10. Have measures been adopted in your country to enforce the duty of the master to render assistance to any person in danger of being lost at sea?

Provisions to that effect exist in **Australia** (section 317A of the Navigation Act 1912), **China**, **Croatia** (where breach of this duty is considered a criminal offence punishable by imprisonment), **Denmark** (section 30 of the Act on Safety at Sea), **France** (law of 17 December 1926), **Germany** (the Penal Code considers a criminal offence not to assist any person in danger), **Greece** (the breach of this duty entails civil, penal and disciplinary consequences for the master), **Italy** (articles 490 and 1113 Code of Navigation and 450 Penal Code), **Latvia** (article 63 of the Maritime Code), **Lithuania** (article 41 of the Law on Safe Navigation), **Mexico** (the Federal Criminal Code considers a criminal offence not to assist any person in danger and article 121 of the Navigation Law requires Master and crew to assist persons in danger), **Netherlands** (pursuant to the 1910 Collision Convention and article 9-e and 9-f of the Dutch Shipping Act of 1909), **New Zealand** (section 32 of the Maritime Transport Act 1994: failure to do so is an offence against the Act), **Norway** (sections 314 and 387 of the General Civil Penal Code), **Poland** (article 60 of the Maritime Code), **Russian Federation** (Article 62 of the Merchant Shipping Code), **Spain** (Spain has not ratified the 1989 Salvage Convention, but the failure to assist a person in danger is a crime under its penal code as well as under law 27/1992 of 24 November 1992), the **United Kingdom** (section 93 of the Merchant Shipping Act 1995) and the **United States** (46 USC 2304 (not applicable to public vessels); 46 USC 2109 applied to U.S. Navy ships by article 0925, U.S. Navy Regulations, 1990, and to U.S. Coast Guard ships by article 4.2.5, U.S. Coast Guard Regulations).

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11. *Have provisions been enacted in your country for the protection of its coastline or related interest from pollution or the threat of pollution following upon a maritime casualty that may to any extent adversely affect the performance of salvage operations?*

No provisions affecting performance of salvage operations exist in **France, Germany, Greece** (where, as regards the protection of the environment the general provisions which permit the Authorities' intervention particularly when there exists a state of common danger or common need, would apply), **Lithuania, Norway, Poland** and the **Russian Federation**.

There are instead provisions that may have an adverse effect on the performance of the salvage operations in **Australia** (under the Protection of the Sea (Powers of Intervention) Act 1981), **China** (article 71 of the China Marine Environment Law so provides: "*If a vessel is involved in a maritime casualty which has caused, or is likely to cause, substantial pollution damage to the marine environment, the competent authorities of maritime administration shall have the power to take compulsory measures to prevent or minimize the pollution damage. If a vessel or installation is involved in a maritime casualty on the high seas, which has caused or threatened substantial pollution damage to the sea area over which the People's Republic of China has jurisdiction, the competent authorities of maritime administration shall have the power to take necessary measures proportionate to the actual or possible damage*"), **Croatia** (where amongst numerous anti-pollution laws and regulations in force, some of them may to a certain extent adversely affect the performance of salvage operations), **Denmark** (Marine Pollution Act, Section 43), **Italy** (Law 31 December 1982, No. 979, article 12), **Latvia** (article 54 of the Law on Maritime Administration and Safety), **Mexico** (Mexican Ecological Legislation and article 123 of the Navigation Law), **Netherlands** (Law Controlling Accidents Northsea of 12 March 1992), **New Zealand** (part 20 of the Maritime Transport Act 1994 deals with the protection of marine environment from hazardous ships, structures, and offshore marine operations. The Director of Maritime Safety is empowered to give directions to a hazardous ship, structure or offshore marine operation to avoid, reduce or remedy pollution or a significant risk of pollution from ship sourced harmful substances in New Zealand continental waters), **United Kingdom** (Schedule 3A of the Merchant Shipping Act 1995; see also section 156(2)(d) of the Merchant Shipping Act 1995) and the **United States**, where there are aspects of civil and criminal law, at both the federal and individual state levels, that can, under certain circumstances, serve to preclude, constrain, or delay the most effective salvage operations.

In **Poland** where if a ship is in distress it is obligatory pursuant to the SAR, to render assistance to her and direct it to a place of safety.

12. *Have provisions been enacted in your country in respect of the admittance to ports or places of safety in your country's territorial waters of vessels in distress?*

Provisions to this effect exist in **Italy** (Decree 18 April 2003 prohibiting access to ports of single hull tankers of over 15 years of age carrying heavy oil), **Latvia** (article 46 of the Law on Maritime Administration and Safety), **Mexico** (article 38 of the Navigation Act enumerates the types of arrivals and defines the forced arrivals as those that take place for order of law, fortuitous event or force majeure and that such arrivals must be justified with the maritime authority), **Russian Federation** (Article 9 of Federal Law 31 July 1998 on distress entry of foreign ships, foreign warships and other state-owned vessels to the territorial sea, internal seawaters and sea ports; Part IV on distress entry of Decree 2 October 1999, No. 1102).

In **China** article 11 of China Maritime Traffic Safety Law so provides: *“Non-military vessel of foreign nationality may not enter the internal waters and harbours of the People’s Republic of China without the approval of its competent authorities. However, under unexpected circumstances such as critical illness of personnel, engine breakdown or vessel being in distress or seeking shelter from weather when they do not have time to obtain approval, they may, while entering China’s internal waters or harbours, make an emergency report to the competent authority and shall obey its directions. Military vessels of foreign nationality may not enter the territorial waters of the People’s Republic of China without the Government of the Government of the People’s Republic of China”*.

In **Croatia** there is no special regime specifying which locations may be used as places of refuge, and generally no restrictions to the admittance of vessels in distress to ports or other places of safety. Moreover, such vessels should be given priority in admittance to ports and berths. On the other hand, maritime authorities are under a general duty to deny access to a port or berth if a vessel constitutes a threat to the navigation or to the safety of life or to the marine environment. In some instances the above two rules may be in conflict, with the possible result that a vessel in distress is denied access to a port or a berth because it constitutes environmental hazard.

In **Greece** no specific provisions have been enacted.

In the **Netherlands**, pursuant to their competence based on the Law Controlling Accidents Northsea of 12 March 1992 and the Wrecks Law of 29 July 1934 as amended, the Dutch authorities made a contingency plan (“Rampenplan 2000”) under which it is provided that vessels in distress may be admitted to a place of refuge; such admission in principle is permitted only upon consent (or even order) of the authorities; when deciding to such admission the authorities have to take a couple of factors into account, such as fairness and reasonableness, proportionality, provision of financial security and the like.

In **New Zealand** no specific provisions have been enacted. It is expected, however, that the Director’s powers under Part 20 of the Maritime Transport Act 1994 would be used to regulate admittance of vessels in distress to ports or places of safety in the territorial sea.

In **Norway**, according to Directive EC 2002/59 Article 20, the Government is obliged to draw up plans to accommodate, in the water under Norwegian jurisdiction, ships in distress. Regulation of 23 December 1994

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No. 1130 on traffic of foreign non-military ships in Norwegian waters Section 12 grants a general entry into Norwegian internal waters.

In **Spain** article 20 and subsequent articles of Royal Decree 210/2004 of 6 February 2004 have implemented Directive 2002/159 of the European Parliament and of the Council and have established a system of control and information on maritime trade.

No provisions exist in the **United States** but, through the United States Coast Guard, the United States has a long and successful record of ensuring the safety of life and property at sea, including careful consideration of requests from vessels in distress to enter United States ports.

Generally in the **European Union** action should be taken in order to implement article 20 of Directive 2002/59/EC of 27 June 2002 that requires Member States to select places of refuge in accordance with the IMO Guidelines (such Guidelines are published in CMI Yearbook 2003-Vancouver I, p. 344).

In some countries places of refuge have been selected, but the list is confidential. This is the case in **Germany**. In other countries (e.g. **Australia** and **United Kingdom**) places may be selected in any specific case.

No provisions have been enacted in **Lithuania**.

13. Are there rules in force in your country in respect of the apportionment of the salvage reward between the owners, master and other persons in the service of a salvaging vessel?

Such rules exist in **Croatia** (pursuant to article 796 of the Maritime Code “certain part of the net reward is payable to the crew, the assessment of such part being made by the Court; the same rule applies to salvage in inland waters), **Denmark** (article 451 of the Maritime Act), **Germany** (pursuant to section 747 HGB the owner receives two thirds, the master and the crew each one sixth), **Greece** (the shipowner is entitled to 50% of the reward, the master to 25% and the crewmembers to 25%; there exists a special procedure as regards the apportionment of the said 25% between the crewmembers), **Italy** (pursuant to article 496 of the Code of Navigation the owner receives one third and the crew two thirds), **New Zealand** section 219 of the Maritime Transport Act 1994 deals with apportionment between salvors: “A payment in respect of a salvage operation that is due to more than one person shall, in the absence of agreement between those persons, be apportioned among those persons in such manner as the Court thinks fit, having regard to the terms of the Convention”), **Norway** (pursuant to section 451 of the Maritime Code the “reder” receives three fifths, the master one third of the residual two fifths and the crew two thirds, such latter share being apportioned in proportion of the wages), **Poland** (pursuant to article 244 of the Maritime Code the reward, after deduction of costs and damages, is divided equally between the owner and the crew, the master receiving at least 30% of such reward), **Russian Federation** (pursuant to article 345 of the Merchant Shipping Code the owner receives three fifths and the crew two fifths) and **Spain** (pursuant to article 7 of law 60/1962 of 24 December 1962 the owner receives one third, while the

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other two thirds are allocated amongst the crew of the salving vessel, other persons who cooperate to the salvage operations and the salvors of persons).

In **Australia, Lithuania, Netherlands** and the **United Kingdom** the apportionment, if not agreed, is a matter for the Court.

In the **United States** rules have been developed as a matter of General Maritime Law by cognizant U.S. Federal Courts: the allocation is based on the relative contributions of the parties to the salvage effort and on the relative risks incurred by them.

A PROVISIONAL REPORT BY THE COMITÉ MARITIME INTERNATIONAL TO IMO

1. Introduction

The Comité Maritime International (CMI), having been informed that none of the 44 States Parties to the Salvage Convention 1989 had transmitted to IMO, as requested by the Resolution on International Cooperation for Implementation, information or documents in respect of the manner in which they had implemented the Convention, suggested to carry out an investigation in this respect.

This suggestion was favourably received by IMO, whereupon the CMI prepared a Questionnaire.

As of 31 August 2004 responses to the Questionnaire were received from 19 States Parties.

2. Manner of implementation

The Convention has been given the force of the law in Croatia, France, Greece, Italy, Lithuania, Marshall Islands, Netherlands, New Zealand, United Kingdom and United States. It has been incorporated in an existing instrument (act, code, etc.) in Australia, China, Denmark, Germany, Latvia, Mexico, Norway, Russian Federation, Poland (Polish ratification is still pending). It has not been implemented yet by Nigeria.

2.2 Denunciation of the 1910 Convention

Although 34 of the 44 States Parties to the Salvage Convention 1989 were parties to the Salvage Convention 1910, only 6 of such 34 States have denounced this latter Convention, the provisions of which seem therefore to be still in force as respects States Parties to the 1910 Conventions which have not yet become parties to the 1989 Convention.

¹ The same conclusion has been reached in France by the Cour d'Appel of Rouen with judgment of 5 September 2002, *Tunisian Transport Company v. Le Préfet Maritime de la Manche et de la Mer du Nord*, (2003 DMF 55).

² The United Kingdom, however, has not exercised its right yet.

³ None of the States that has responded to the Questionnaire has ratified the UNESCO Convention.

2.3 Reservations made by States parties

The formula used in article 30(1) of the Convention (“..... reserve the right not to apply” has given rise to doubts as to whether such a reservation entails the automatic exclusion of the relevant provision of the Convention or an express declaration is also required. This latter view seems to be shared by the United Kingdom who, after having made reservations in respect of article 30(1) (a), (b) and (d) has exercised its right in respect only of article 30(1) (a) and (b) and, consequently considers the Convention applicable in respect of Maritime Cultural property¹. Although this is a standard formula, its wording may therefore, be misleading.

Reservations have been made (by Australia, China, France, Lithuania, United Kingdom) in respect of the application of the Convention to salvage operations that take place in inland waters and all vessels involved are of inland navigation (article 30(1)(a)).

Reservations have been made (by Australia, China, Croatia, France, Lithuania and Mexico) in respect of the application of the Convention when salvage operations take place in inland waters and no vessel is involved.

Reservations have been made (by Australia, Canada, China, Croatia, France, Greece, Iran, Netherlands, Norway, Russian Federation, Saudi Arabia, Spain, Sweden and United Kingdom²) in respect of the application of the Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea bed (article 30(1)(a)(d)). Although no reservation has been made by the Marshall Islands, the recovery of maritime cultural property will be governed by Marshall Islands national legislation, the general maritime law of salvage will, in general, not apply to the recovery of prehistoric or historic artefacts, or archaeologically significant objects.

2.4 Salvage in inland waters

Only a relatively small number of States Parties has made reservations in respect of either article 30(1)(a) or article 30(1)(b): five in respect of the former and six in respect of the latter.

It follows that in most of such States the Convention applies in inland waters also when all vessels involved are vessels of inland navigation and when no vessel is involved.

2.5 Possible conflict between the Salvage Convention 1989 and the UNESCO Convention on Protection of Underwater Cultural Heritage, 2001

Notwithstanding the relatively large number of reservations in respect of maritime cultural property, permitted by article 30(1)(d), the majority of (31 out of 44) should apply the provisions of the Convention also in respect of such property. This might prevent all such States to become parties to the UNESCO Convention³ in view of some of its provisions being in conflict with those of the Salvage Convention.

2.6 Extension of the scope of application of the Convention to platforms and drilling units

In only five of the fourteen States in respect of which responses to the Questionnaire have been received (China, Croatia, Greece, Lithuania and Norway) the provisions of the Convention apply to movable installations, except, it would appear, when they are engaged in exploration activities.

2.7 Extension of the scope of the Convention to warships and other non-commercial vessels owned or operated by a State

In eight of the States Parties in respect of which responses to the Questionnaire have been so far received (Croatia, Denmark, Latvia, Netherlands, New Zealand, Norway, Russian Federation and United Kingdom) such extension has made.

2.8 Adoption of measures to enforce the duty of the master to under assistance to any person in danger

In all the States Parties in respect of which responses to the Questionnaire have been received there are provisions to this effect and in most of them the breach of such provisions is a criminal offence.

2.9 Apportionment of the salvage award between owners, master and crew of the salvaging vessel

In seven of the States Parties in respect of which responses to the Questionnaire have been received (Denmark, Germany, Greece, Italy, Norway, Poland, Russian Federation) the apportionment is made by statute. The percentage payable to the owner varies between a maximum of 66% (in Germany) to a minimum of 33% (in Italy and Spain), intermediate percentages being 60% (in Denmark, Norway and Russian Federation) and 50% (in Greece and Poland).

In some other States (Australia, Croatia, Lithuania, Marshall Islands, Netherlands, United Kingdom and United States) the apportionment, if not agreed, is a matter for the Court.

2.10 Rights of coastal States

Provisions for the protection of the coast line or related interest from pollution or the threat of pollution following upon a maritime casualty that may adversely affect the performance of salvage operations exist in several amongst the State in respect of which responses to the Questionnaire have been received. This is the case for Australia, China, Croatia, Denmark, Italy, Latvia, Mexico Netherlands, New Zealand, United Kingdom and the United States.

In several States, however action is in progress for the selection of places of refuge following the criteria set out in the IMO Guidelines⁴

⁴ Reference is made to the studies on Places of Refuge published in the CMI Yearbook 2003, pages 314-498.

J. UNESCO

REPORT OF THE CMI WORKING GROUP ON UNESCO CONVENTION ON THE PROTECTION OF UNDERWATER CULTURAL HERITAGE

The UNESCO Convention was adopted on November 2, 2001, by the Plenary Session of the 31st General Conference. The Convention provides that it will enter into force three months after the deposit of the twentieth instrument of ratification, acceptance, approval or accession with the Director-General of UNESCO. Thus far, the Convention has been ratified only by Panama and Bulgaria.

It remains uncertain whether the Convention will enter into force, particularly since it is not supported by most of the major maritime countries. The CMI's objections to the Convention were outlined in the Committee's report of March 17, 2003 (CMI Yearbook-2002 at 154).

Dated: Vancouver, B.C., Canada
June 1, 2004

Respectfully submitted,
PATRICK GRIGGS, Chairman
JOHN D. KIMBALL, Rapporteur

K. BAREBOAT CHARTERED VESSELS

REPORT SUBMITTED BY CMI

Executive Summary:

This report represents the outcome of research into this topic carried out by the IMO Secretariat and CMI

I Background

(1) In November 2002 the Diplomatic Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, adopted a number of resolutions including a resolution calling on the Secretariat of the International Maritime Organisation (IMO) to carry out a study of the issuing of certificates, in the context of the Athens Protocol, attesting that insurance or other financial security is in force with regard to the position of bareboat Charterers. If found necessary the development of appropriate guidelines would be put in hand.

(2) At its 86th session in April/May 2003, the Legal Committee of the IMO considered this resolution and requested the Secretariat to collaborate with the CMI in undertaking a study. The Committee noted that the Conference Resolution called for the study to be carried out in the context of the Athens Convention and Protocol, but agreed that the study should not be limited in this respect and should be extended to other liability conventions where the issue may be relevant. In this connection the Committee noted that the practice of allowing a bareboat charterer to be registered in one State while the ship ownership was registered in another State could have implications for any liability convention, which imposed certificate-issuing obligations only on the State of the registered owner.

(3) The relevance of the study flows from the fact that in many countries worldwide only the ownership title is entered and recorded in the Ships Registry. The practice of “dual registration” has allowed Bareboat Charterers to be registered, however temporarily, in a country different from that where the ship’s entry and the ownership title are registered (the “mother registry”). This practice has led to the title of ownership and the title of possession (under Bareboat Charter terms) to be recorded in two distinct countries for the same vessel. Notwithstanding the difficulties of various kinds that the above practice entails (which we will not address at this time and place), it has

become a major cause for problems the matter of ascertaining who of the two, registered owner and bareboat charterer, is the party obliged to comply with the obtaining of certificates as required by some liability Conventions, under which the operations of the ship must be backed up by the guarantees emanating from compulsory insurance and financial certificates. While the registered owner whose ship is bareboat chartered remains alien to the ship's merchant and navigational life having parted with her possession, the bareboat charterer is truly in the position to manage and control the ship's operations and he should be therefore responsible for the obtaining of said certificates. How then the liability Conventions may sort this out?

(4) The Secretariat and the CMI jointly drafted a questionnaire requesting information on the current practice of bareboat charterer registration and the implications for certificate-issuing obligations under IMO liability conventions. This questionnaire has been circulated by the IMO to member governments and by the CMI to member associations and there follows a report on the responses received. Altogether, 36 replies were received by 25 August 2004 and these answers will be analysed as follows in this report.

II QUESTIONNAIRE ON REGISTRATION OF BAREBOAT CHARTERED SHIPS

Study of the replies received from: *Argentina, Antigua & Barbuda, Australia, Bangladesh, Barbados, Belgium, Brazil, Croatia, Cyprus, Denmark, Estonia, Finland, Georgia, Germany, Greece, Hong-Kong (China), India, Ireland, Italy, Japan, Korea, Latvia, Liberia, Lithuania, Malta, Marshall Islands, Mauritius, Mexico, Norway, Poland, Slovenia, Spain, Sweden, Thailand, United Kingdom and Vanuatu.*

1) Does the national legislation of your country allow for temporary registration of bareboat chartered ships? If the response to this question is "yes", please answer the following additional questions.

Affirmative: ANTIGUA & BARBUDA, AUSTRALIA, BARBADOS, BELGIUM, BRAZIL, U.K., CYPRUS, HONG-KONG SAR (CHINA), DENMARK, ESTONIA, FINLAND, GEORGIA, GERMANY, ITALY, LATVIA, LIBERIA, LITHUANIA, MEXICO, KOREA, MALTA, MARSHALL ISLANDS, MAURITIUS, POLAND, SPAIN and VANUATU.

Negative: ARGENTINA, BANGLADESH, CROATIA, GREECE, INDIA, IRELAND, JAPAN, NORWAY, SLOVENIA, SWEDEN and THAILAND.

A majority of 25 out of 36.

2) *How is the term “bareboat charter” defined in your legislation for purposes of such registration?*

From the 25 affirmative responses the term “bareboat charter” is legally defined as:

A) Chartering a vessel with full control and possession, the management and operation of the ship is in the hands of the Charterer, the Charterer is responsible toward third parties, the vessel is chartered without crew.

This is the widest definition found to be shared by ANTIGUA & BARBUDA, AUSTRALIA, U.K., CYPRUS, HONG-KONG SAR (CHINA), MALTA, MAURITIUS and LITHUANIA.

B) Also is defined in relation to the employment of a vessel with a purchase option involving a change of flag.

This more restrictive definition is common to KOREA and GEORGIA.

C) Also is defined in relation to long-term employment under an administrative license for temporary use of the flag.

This is the case of GERMANY and SPAIN, though with some differences. In GERMANY the ship needs a German manning certificate and a minimum bareboat charter period of one year is required.

D) Some jurisdictions impose nationality requirements; in FINLAND the legal basis for registration would be the fact that the operations of the ship are basically under Finnish influence, as established from her chartering arrangements.

E) In MEXICO the Bareboat Charter is associated to the Time Charter and does not have a specific definition.

F) In BRAZIL the Bareboat Charter Operator is meant to be who equips the ship for operation under his responsibility.

The remaining countries do not have a statutory definition in their legislation.

3) *Under the legislation of your country, are obligations imposed on a registered ship owner under international conventions on liability to which your country is a Party also imposed on a registered bareboat charterer when the ship concerned is permanently registered in a different country? If so, are the obligations imposed on the bareboat charterer the same as those imposed on the registered ship owner?*

Affirmative: ANTIGUA & BARBUDA, BRAZIL, CYPRUS, DENMARK, ESTONIA, GEORGIA, GERMANY, HKSAR, KOREA, LATVIA, LIBERIA, LITHUANIA, MEXICO, MALTA, MARSHALL ISLANDS, MAURITIUS, SPAIN, U.K. and VANUATU.

Negative: AUSTRALIA, BELGIUM and POLAND.

No specific answer: FINLAND and ITALY.

A qualified majority equated the Bareboat Charterer to a registered Owner.

4) *When the ship is permanently registered in another country, what legal/administrative arrangements are in place to ensure that certificates of financial security which must be issued by the flag State Administration are in fact issued in respect of bareboat chartered ships temporarily registered in your country? Are such certificates issued in the name of the B.B. Charterer?*

The certificates of financial security are issued in the name of the Bareboat Charterer in:

ANTIGUA & BARBUDA, BRAZIL, CYPRUS, HKSAR, DENMARK (CLC only), FINLAND, GEORGIA, GERMANY, ITALY, KOREA, LIBERIA, MALTA, SPAIN and U.K.

A large majority, though in most cases the certificates are issued to the ship herself.

No arrangements: BELGIUM and ESTONIA.

5) *What distinction is made, if any, in the legal/administrative arrangements in your country when the ship is permanently registered in another country which is not a party to one of the conventions for which a certificate attesting insurance or other financial security is required for the ship when the ship is temporarily registered in your country as a bareboat chartered ship?*

Generally there is no distinction made.

The mother Registry would be the relevant one as far as title and mortgages over the vessel registered therein.

CLC countries have implemented certificates, under Art. VII para 2 of ships not registered in a Contracting State.

6) *Does your country require the consent of the former flag state for the temporary registration of the bareboat chartered ship in your country?*

Affirmative: ANTIGUA & BARBUDA, CYPRUS, SPAIN, HONG KONG, DENMARK, ESTONIA, GEORGIA, ITALY, LATVIA, MALTA, BELGIUM, MAURITIUS and POLAND.

Negative: AUSTRALIA, BRAZIL, GERMANY, KOREA, U.K.

LITHUANIA, GEORGIA and MAURITIUS require suspension of registration only.

MEXICO requires a certificate of deflagging and deletion from the former flag State. AUSTRALIA requires deregistration. LIBERIA provides the foreign State of registration with a Letter of Consent to the ship's bareboat charter registration into the Liberian flag administration and requires that the registered bareboat charterer provide an official certificate from the former State of registration setting forth the Ownership of the ship and recorded encumbrance. BRAZIL requires proof of provisional cancellation of the former flag State.

7) *When does temporary registration of a bareboat chartered ship terminate?*

Generally no special provisions are found. It seems that when the contract of a bareboat charter party ends, the temporary registration theoretically terminates.

At the end of the five year registration period for U.K. and at the end of two years for ITALY, though registration may be extended or renewed.

NOTE under questions 6 and 7: The UN International Convention on Maritime Liens and Mortgages, Geneva 1993, gained international force on 5 September 2004 and section 16 thereof deals with temporary change of flag in some detail but with important implications. These two questions may need to be revised.

III

Conclusion from the questionnaire

1. Bareboat charter registration is recognised in a great number of countries, spread evenly between Common law and Civil law jurisdictions.
2. There is no set definition of the term “bareboat charter”, but it is common ground that in such a situation full possession and control of the ship would lie with a person other than her Owner, who would also employ the Master and crew. It should, thus, be expected that third-party liability arising from the operation of the ship, whether personal or vicarious, would be borne by a person other than her Owner.
3. Certification of ships bareboat chartered-in does not seem to be addressed expressly in national laws. Responses to the questionnaire suggest that, by implication, these ships are assimilated to vessels registered in the name of their Owners. This is because either, in the national law concerned, a bareboat charterer is generally equated with an Owner, or because certificates are deemed to be issued to the ships themselves rather than to the Owners or the Bareboat Charterers. Responses do not distinguish between cases where the law of the underlying registry provides for the compulsory certification of the ship or her Owner and those where such obligation is not present.
4. No reliance can be placed on the certification requirements of the underlying registry, because a number of national legal systems either require deletion/suspension of the original registration, or do not make bareboat charter registration dependant on the consent of the underlying registry. That may, in turn, give grounds for the cancellation of the original registration and related certification.
5. The fact that, in certain countries, certificates provided for by the CLC are issued to “the ship” rather than the Owner or the Bareboat Charterer is

probably of no significance, because the Convention clearly places the requirement on the Owner for the purpose of covering *his* liability.

6. The HNS 1996 Convention, which is likely to gain international force within two years, covers the situation sufficiently well at Article 12.2 providing that with respect to a ship not registered in a State Party the compulsory insurance certificate may be issued or certified by the appropriate authority of any State Party.

7. A possible solution:

A Resolution which records that the definition of “registered Owner”, wherever it appears in the context of the obligation to obtain a certificate attesting that insurance or other financial security is in force, shall be deemed to include a “registered bareboat charterer”. If a Resolution is not thought sufficient and amendment to existing Conventions is necessary, it is suggested that a new definition of “Owner” should be introduced based on Article 1.3 of the HNS Convention as follows: “Owner” means the person or persons registered as the Owner of the ship or as the bareboat charterer or, in the absence of registration, the person or persons actually owning the ship.” These conclusions and draft proposal are hereby submitted to the IMO’s Legal Committee.

IV Related Documents

Article 4 bis Protocol 2002 to the Athens Convention 1974, Article VII, CLC 92, Articles 1 and 12 HNS 96 and Article 16 MLM 93.

L. WRECK REMOVAL

THE COMPATIBILITY OF THE DRAFT CONVENTION ON WRECK REMOVAL WITH EXISTING MARITIME CONVENTIONS

Introduction

At the 38th Session of the Legal Committee, the CMI was requested to consider whether the draft Convention on Wreck Removal (the draft Wreck Removal Convention) in its present form was compatible with existing maritime conventions. This report addresses that issue. At the end of this Report will be found the text of articles in existing maritime conventions which are considered relevant in the context of the draft Wreck Removal Convention.

The Position post stranding/sinking under the draft Wreck Removal Convention:

By virtue of the provisions of Article 1(1)(4)(a) and (b), the draft Wreck Removal Convention will apply primarily to a vessel which has already sunk or stranded. In many cases where a casualty has stranded, such a casualty will already be the object of the attention of tug operators and salvage companies whether under contract to the owner or as pure salvage. Article 10 (4) of the draft Wreck Removal Convention specifically provides that the registered owner may contract with any salvor or other person to perform the removal of the wreck determined to constitute a hazard on the owner's behalf, and when such removal has commenced, the Coastal State may intervene in the removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with safety and environmental considerations.

However, Article 10 (4) still has to be construed along with the other provisions of Article 10, as it essentially provides that the registered owner's obligations under Article 10 can be performed by a salvor or other appropriate person. For example, the Coastal State is still obliged to impose a reasonable deadline under Article 10 (6). Under Article 10 (5), before removal commences, the Coastal State may still lay down conditions but only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with safety and environmental considerations. If the reasonable deadline is not met by the salvor, theoretically the salvor could be dispossessed by virtue of action taken by the Coastal State under Article 10 (7).

From the above analysis, it can be seen that a salvor could find himself facing dispossession pursuant to Article 10 (7) if, for example, he does not refloat a stranded vessel by a deadline imposed by the Coastal State pursuant to Article 10 (6).

Until the deadline has passed, Article 10 (4) appears to provide that once removal commences, the Coastal State may intervene in the removal only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with safety and environmental considerations. However, if the Coastal State considers that immediate action is required, even though a salvor is in possession, once the relevant notices have been given under Article 10 (6) and (8), presumably the Coastal State has a right to undertake the removal by the most practical and expeditious means available, consistent with considerations of safety and protection of the marine environment. Again, the Coastal State in such circumstances would have the theoretical right to dispossess a salvor, but only if dispossession allowed the most practical and expeditious means of removal to be employed, consistent with considerations of safety and protection of the marine environment. If this situation is acceptable, no redrafting appears necessary.

The position prior to the vessel stranding/sinking under the draft Wreck Removal Convention:

Article 1 (4) (d) of the draft Wreck Removal Convention includes in the definition of a “wreck” for the purposes of the Convention, “a ship that is about, or may reasonably be expected, to sink or to strand, where an act or activity to assist the ship or any property in danger is not already underway.” It is understood that this sub-article was included to cover the position where a vessel has been abandoned and represents a hazard, and the words “... where an act or activity to assist the ship or any property in danger is not already underway” were added to take account of circumstances in which salvage or other rescue services are in hand.

There may be rare occasions when the casualty has not yet received any such assistance, and if the definition of “wreck” set out in Article 1 (4) (d) were not included, the Coastal State would have no right to take action under Article 10 and could make no subsequent claim under Article 11 for compensation if its actions in removing the “wreck” successfully averted sinking or stranding. It follows that if there is a drifting, hazardous and unassisted casualty which is about, or may reasonably be expected, to sink or to strand, the relevant Coastal State will determine whether it poses a hazard under Article 7. If it so determines, the State will be entitled to rely upon the provisions of Articles 10 and 11.

In many cases, however, a casualty will already be receiving assistance whether under contract to the owner or as pure salvage. It is clear from the wording of Article 1 (4) (d) that such a casualty can only begin to be classified as a wreck for the purposes of the Convention, if it is about to sink or to strand, or it may reasonably be expected to sink or to strand. If the casualty may reasonably be expected to sink or strand, but an act or activity to assist the ship in danger is already underway, the vessel is not to be classified as a wreck. It follows that if a salvor is in possession of a vessel which may reasonably be expected to sink or strand, and he is acting to assist the ship in danger, theoretically the casualty should not be classified as a wreck for the purposes

The Compatibility with existing maritime conventions

of the Convention, and the Coastal State should not be empowered to intervene under the terms of the Convention.

However, in reality, if a casualty is drifting towards the coast of a State Party, and the salvor does not appear to be averting the danger, albeit that he is acting to assist the ship in danger, the Coastal State may well wish to intervene and take action under the Convention on the basis that:

- (a) the acts of the salvor are not in fact assisting the ship and the vessel is therefore a wreck on the true and proper construction of Article 1 (4) (d); and
- (b) the wreck poses a hazard pursuant to Article 7.

On the other hand, if prior to sinking or stranding, the vessel is being positively assisted and the salvor appears to be averting the danger of sinking or stranding, under the provisions of the present draft Convention, the Coastal State would appear to have no power to intervene under Article 10 because the vessel would not be a wreck for the purposes of Article 1(4) (d), and therefore Article 7 is never triggered.

Assuming that this is the intention, we would suggest that this is best achieved by revising Article 1 (4) (d) to read “in the absence of effective action to assist the ship or any property in danger, a ship that is about, or may reasonable be expected, to sink or to strand.”

Is the position under Article 1(4) and Article 10 of the draft Wreck Removal Convention compatible with the provisions of the Salvage Convention and the Intervention Convention?

If the salvor fulfils his duties under Article 8 (1) of the Salvage Convention, in most cases, he should not have a problem in performing the obligations imposed on the registered owner under the draft Wreck Removal Convention, provided that the Coastal State acts reasonably and provided that unreasonable conditions are not imposed at the outset under Article 10 (5) or unreasonable interventions adopted later under Article 10 (4).

If the Coastal State considers at some stage that immediate action is required, what will be the position of a salvor in possession? Theoretically, such a salvor could be dispossessed, but, provided that the Coastal State acts reasonably, presumably this would only happen in reality if there had been some problem about his salvage planning or performance to date. The Coastal State would only have the right to dispossess a salvor in possession, if dispossession allowed the most practical and expeditious means of removal to be employed, consistent with considerations of safety and protection of the marine environment.

The Salvage and draft Wreck Removal Conventions should be compatible in their workings, provided, as set out above:

- (a) The Coastal State behaves reasonably and fairly;
- (b) The Coastal State does not impose unreasonable conditions at the outset; and
- (c) The Coastal State does not intervene unreasonably after the removal has commenced.

If the Coastal State lays down unreasonable conditions or makes unreasonable interventions thereafter, could a salvor find himself in breach of his obligations under Article 8 of the Salvage Convention if he performs the “removal” as part of his obligations as a salvor? In this respect, there is a potential area of conflict between the two Conventions. This could be solved by incorporating into Article 10 (1) of the draft Convention appropriate consultative procedures of the type set out in Article III of the Intervention Convention. The possibility of unfair dispossession might be dealt with by the inclusion of a compensation provision similar to Article VI of the Intervention Convention.

Relevant provisions of the International Convention on Salvage (London) 1989

Article 5 Salvage operations controlled by public authorities

1. This Convention shall not affect any provisions of national law or any international convention relating to salvage operations by or under the control of public authorities.

2. Nevertheless, salvors carrying out such salvage operations shall be entitled to avail themselves of the rights and remedies provided for in this Convention in respect of salvage operations.

3. ...

Article 8 Duties of the salvor and of the owner and master

1. The salvor shall owe a duty to the owner of the vessel or other property in danger:

- (a) to carry out the salvage operations with due care;
- (b) in performing the duty specified in subparagraph (a) to exercise due care to prevent or minimise damage to the environment;
- (c) whenever circumstances reasonably require, to seek assistance from other salvors; and
- (d) to accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger; provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable.

Article 9 Rights of coastal States

Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognised principles of international law to protect its coastline or related interests from pollution or the threat of pollution following upon a maritime casualty or acts relating to such a casualty which may reasonably be expected to result in major harmful consequences, including the right of a coastal State to give directions in relation to salvage operations.

Article 11 Co- operation

A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-

The Compatibility with existing maritime conventions

operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.

Article 12

1. Salvage operations which have had a useful result give right to a reward.
2. Except as other provided, no payment is due under this Convention if the salvage operations have had no useful result.
3. ...

Article 14

1. If the salvor has carried out salvage operations in respect of a vessel which by itself or its cargo threatened damage to the environment and has failed to earn a reward under article 13 at least equivalent to the special compensation assessable in accordance with this article, he shall be entitled to special compensation from the owner of that vessel equivalent to his expenses as herein defined.
2.
3. If the salvor has been negligent and has thereby failed to prevent or minimise damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

Relevant provisions of the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution 1969, as amended in respect of HNS

Article III

When a coastal State is exercising the right to take measures in accordance with Article 1, the following provisions shall apply:

- (a) before taking any measures, a coastal State shall proceed to consultation with other States affected by the maritime casualty, particularly with the flag State or States;
- (b) the coastal State shall notify without delay the proposed measures to any persons physical or corporate known to the coastal State, or made known to it during the consultations, to have interests which can reasonably be expected to be affected by those measures. The coastal State shall take into account any views they may submit;
- (c) before any measure is taken, the coastal State may proceed to a consultation with independent experts, whose names will be chosen from a list maintained by the IMO;
- (d) in cases of extreme urgency requiring measures to be taken immediately, the coastal State may take measures rendered necessary by the urgency of the situation, without prior notification or consultation or without continuing consultations already begun;
- (e) a coastal State shall, before taking such measures and during their course, use its best endeavours to avoid any risk to human life, and to afford persons in distress any assistance of which they may stand in need,

Draft Convention on Wreck Removal

and in appropriate cases to facilitate repatriation of ships' crews, and to raise no obstacle thereto;

- (f) measures which have been taken in application of Article 1 shall be notified without delay to the States and the known physical or corporate persons concerned, as well as the Secretary General of the IMO.

Article VI

Any party which has taken measures in contravention of the provisions of the present Convention causing damage to others, shall be obliged to pay compensation to the extent of the damage caused by measures which exceed those reasonably necessary to achieve the end mentioned in Article 1.

Article VIII

1. Any controversy between the Parties as to whether measures taken under Article 1 were in contravention of the provisions of the present Convention, to whether compensation is obliged to be paid under Article VI, and to the amount of such compensation shall, if settlement by negotiation between the Parties involved or between the Party which took the measures and the physical or corporate claimants has not been possible, and if the Parties do not otherwise agree, be submitted upon request of any of the Parties concerned to conciliation or, if conciliation does not succeed, to arbitration, as set out in the Annex to the present Convention.

2. The Party which took the measures shall not be entitled to refuse a request for conciliation or arbitration under provisions of the preceding paragraph solely on the grounds that any remedies under municipal law in its own courts have not been exhausted.

The Annex referred to in Article VIII is lengthy and covers both the conciliation and arbitral procedures but only allows the matter to be taken up by the State Party, the nationals or property of which have been affected by the relevant Coastal State measures. The conciliation and arbitral procedures can not be personally invoked by the complainants themselves. Under Article 3 of the Annex, the Conciliation Commission is composed of three members, one nominated by the coastal State which took the measures, one nominated by the State, the nationals or property of which have been affected by those measures and a third, who shall preside over the Commission and shall be nominated by agreement between the two original members. The Conciliators are selected from a list of qualified persons designated by the State Parties previously drawn up in accordance with the procedure set out in Article 4 of the Annex. Under Article 14 of the Annex, the Arbitration Tribunal consists likewise of three members, one nominated by the Coastal State, one by the other State Party and a third by agreement between the first two arbitrators.

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 Etats dont le nom est suivi par un astérisque ont fait des réserves. Un résumé du texte de ces réserves est publié après la liste des ratifications de chaque Convention.

(3) - Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonciation prend effet.

**STATUS OF THE
RATIFICATIONS OF AND ACCESSIONS
TO THE BRUSSELS INTERNATIONAL MARITIME
LAW CONVENTIONS**

(Information provided by the Ministère des Affaires Etrangères,
du Commerce Extérieur et de la Coopération au Développement de Belgique,
depository of the Conventions).

Editor's notes:

(1) - The dates mentioned are the dates of the deposit of instruments. The indication (r) stands for ratification, (a) for accession.

(2) - The States whose names are followed by an asterisk have made reservations. The text of such reservations is published, in a summary form, at the end of the list of ratifications of each convention.

(3) - The dates mentioned in respect of the denunciation are the dates when the denunciation takes effect.

**Convention internationale pour
l'unification de certaines
règles en matière
d'Abordage
et protocole de signature**

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1er mars 1913

**International convention
for the unification of certain
rules of law relating to
Collision between vessels
and protocol of signature**

Brussels, 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
Bahamas	(a)	3.II.1913
Belize	(a)	3.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		
Hong Kong⁽¹⁾	(a)	1.II.1913
Macao⁽²⁾	(r)	25.XII.1913
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

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

(2) With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Abordage 1910**Collision 1910*

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
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
Madagascar	(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⁽³⁾	(r)	10.VII.1936
Saint Kitts and Nevis	(a)	1.II.1913

⁽³⁾ 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.

*Abordage 1910**Assistance et sauvetage 1910*

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
<i>(denunciation 19 December 1995)</i>		
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
United Kingdom	(r)	1.II.1913
Jersey, Guernsey, Isle of Man, Anguilla, Bermuda, Gibraltar, 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

**Convention internationale
pour l'unification de certaines
règles en matière**

**d'Assistance et de sauvetage
maritimes
et protocole de signature**

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1 mars 1913

**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

*Assistance et sauvetage 1910**Assistance and salvage 1910*

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
China		
Hong Kong⁽¹⁾	(a)	1.II.1913
Macao⁽²⁾	(r)	25.VII.1913
Cyprus	(a)	1.II.1913
Croatia	(a)	8.X.1991
<i>(denunciation 16.III.2000)</i>		
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

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

⁽²⁾ With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Salvage Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Assistance et sauvetage 1910**Assistance and salvage 1910*

Haiti	(a)	18.VIII.1951
Hungary	(r)	1.II.1913
India	(a)	1.II.1913
Iran	(a)	26.IV.1966
<i>(denunciation 11.VII.2000)</i>		
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
Malaysia	(a)	1.II.1913
Madagascar	(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
<i>(denunciation 9.XII.1996)</i>		
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 Príncipe	(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
<i>(denunciation 19.I.2006)</i>		
Sri Lanka	(a)	1.II.1913
Sweden	(r)	12.XI.1913
Switzerland	(a)	28.V.1954
Syrian Arab Republic	(a)	1.VIII.1974

*Assistance et sauvetage 1910**Assistance and salvage - Protocole 1967*

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
United Kingdom ⁽³⁾	(r)	1.II.1913
Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, British Virgin Islands, Montserrat, Turks & Caicos Islands, Saint Helena	(a)	1.II.1913
<i>(denunciation 12.XII.1994 effective also for Falkland Islands, Montserrat, South Georgia and South Sandwich Islands)</i>		
United States of America	(r)	1.II.1913
Uruguay	(a)	21.VII.1915
Zaire	(a)	17.VII.1967

**Protocole portant modification
de la convention internationale
pour l'unification de
certaines règles en matière
d'Assistance et de sauvetage
maritimes**

**Signée a Bruxelles, le 23
septembre 1910**

Bruxelles, 27 mai 1967
Entré en vigueur: 15 août 1977

**Protocol to amend
the international convention for
the unification of certain
rules of law relating to
Assistance and salvage at
sea**

**Signed at Brussels on 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
<i>(denunciation 16.III.2000)</i>		
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

⁽³⁾ Including Jersey, Guernsey and Isle of Man.

*Limitation de responsabilité 1924**Limitation of liability 1924*

**Convention internationale pour
l'unification de certaines
règles concernant la
Limitation de la responsabilité
des propriétaires
de navires de mer
et protocole de signature**

Bruxelles, 25 août 1924
Entrée en vigueur: 2 juin 1931

**International convention for
the unification of certain
rules relating to the
Limitation of the liability
of owners
of sea-going vessels
and protocol of signature**

Brussels, 25th August 1924
Entered into force: 2 June 1931

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
Madagascar	(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
<i>(denunciation - 4.I.2006)</i>		
Sweden	(r)	1.VII.1938
<i>(denunciation - 30.VI.1963)</i>		
Turkey	(a)	4.VII.1955

**Convention internationale pour
l'unification de certaines
règles en matière de
Connaissance
et protocole de signature
“Règles de La Haye 1924”**

Bruxelles, le 25 août 1924
Entrée en vigueur: 2 juin 1931

**International convention for
the unification of certain
rules of law relating to
Bills of lading
and protocol of signature
“Hague Rules 1924”**

Brussels, 25 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
<i>(denunciation - 16.VII.1993)</i>		
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
China		
Hong Kong⁽¹⁾	(a)	2.XII.1930
Macao⁽²⁾	(r)	2.II.1952
Cyprus	(a)	2.XII.1930
Croatia	(r)	8.X.1991
Cuba*	(a)	25.VII.1977

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

⁽²⁾ With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

Denmark*	(a)	I.VII.1938
<i>(denunciation – 1.III.1984)</i>		
Dominican Republic	(a)	2.XII.1930
Ecuador	(a)	23.III.1977
Egypt	(a)	29.XI.1943
<i>(denunciation – 1.XI.1997)</i>		
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
<i>(denunciation – 1.XI.1997)</i>		
Malaysia	(a)	2.XII.1930
Madagascar	(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
Romania	(r)	4.VIII.1937
<i>(denunciation – 18.III.2002)</i>		
Sao Tomé and Principe	(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
Singapore	(a)	2.XII.1930
Slovenia	(a)	25.VI.1991
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, 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

Reservations

Australia

a) The Commonwealth of Australia reserves the right to exclude from the operation of legislation passed to give effect to the Convention the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the States of Australia.

b) The Commonwealth of Australia reserves the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

Cuba

Le Gouvernement de Cuba se réserve le droit de ne pas appliquer les termes de la Convention au transport de marchandises en navigation de cabotage national.

Denmark

...Cette adhésion est donnée sous la réserve que les autres Etats contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne le Danemark:

1) La Loi sur la navigation danoise en date du 7 mai 1937 continuera à permettre que dans le cabotage national les connaissements et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.

2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, dernier alinéa, de la loi danoise sur la navigation - le transport maritime entre le Danemark et les autres Etats nordiques, dont les lois sur la navigation contiennent des dispositions analogues.

3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome, le 23 novembre 1933, ne seront pas affectées par cette Convention."

Egypt

...Nous avons résolu d'adhérer par les présentes à la dite Convention, et promettons de concourir à son application. L'Egypte est, toutefois, d'avis que la Convention, dans sa totalité, ne s'applique pas au cabotage national. En conséquence, l'Egypte se réserve le droit de régler librement le cabotage national par sa propre législation...

France

...En procédant à ce dépôt, l'Ambassadeur de France à Bruxelles déclare, conformément à l'article 13 de la Convention précitée, que l'acceptation que lui donne le Gouvernement Français ne s'applique à aucune des colonies, possessions, protectorats ou territoires d'outre-mer se trouvant sous sa souveraineté ou son autorité.

Ireland

...Subject to the following declarations and reservations: 1. In relation to the carriage of goods by sea in ships carrying goods from any port in Ireland to any other port in Ireland or to a port in the United Kingdom, Ireland will apply Article 6 of the Convention as though the Article referred to goods of any class instead of to particular goods, and as though the proviso in the third paragraph of the said Article were omitted; 2. Ireland does not accept the provisions of the first paragraph of Article 9 of the Convention.

Ivory Coast

Le Gouvernement de la République de Côte d'Ivoire, en adhérant à ladite Convention précise que:

1) Pour l'application de l'article 9 de la Convention relatif à la valeur des unités monétaires employées, la limite de responsabilité est égale à la contre-valeur en francs CFA sur la base d'une livre or égale à deux livres sterling papier, au cours du change de l'arrivée du navire au port de déchargement.

2) Il se réserve le droit de réglementer par des dispositions particulières de la loi nationale le système de la limitation de responsabilité applicable aux transports maritimes entre deux ports de la République de Côte d'Ivoire.

Japan

Statement at the time of signature, 25.8.1925.

Au moment de procéder à la signature de la Convention Internationale pour l'unification de certaines règles en matière de connaissance, le soussigné, Plénipotentiaire du Japon, fait les réserves suivantes:

a) A l'article 4.

Le Japon se réserve jusqu'à nouvel ordre l'acceptation des dispositions du a) à l'alinéa 2 de l'article 4.

b) Le Japon est d'avis que la Convention dans sa totalité ne s'applique pas au cabotage national; par conséquent, il n'y aurait pas lieu d'en faire l'objet de dispositions au Protocole. Toutefois, s'il n'en pas ainsi, le Japon se réserve le droit de régler librement le cabotage national par sa propre législation.

Statement at the time of ratification

...Le Gouvernement du Japon déclare

1) qu'il se réserve l'application du premier paragraphe de l'article 9 de la Convention; 2) qu'il maintient la réserve b) formulée dans la Note annexée à la lettre de l'Ambassadeur du Japon à Monsieur le Ministre des Affaires étrangères de Belgique, du 25 août 1925, concernant le droit de régler librement le cabotage national par sa propre législation; et 3) qu'il retire la réserve a) de ladite Note, concernant les dispositions du a) à l'alinéa 2 de l'article 4 de la Convention.

Kuwait

Le montant maximum en cas de responsabilité pour perte ou dommage causé aux marchandises ou les concernant, dont question à l'article 4, paragraphe 5, est augmenté jusque £ 250 au lieu de £ 100.

The above reservation has been rejected by France and Norway. The rejection of Norway has been withdrawn on 12 April 1974. By note of 30.3.1971, received by the Belgian Government on 30.4.1971 the Government of Kuwait stated that the amount of £ 250 must be replaced by Kuwait Dinars 250.

Nauru

Reservations: a) the right to exclude from the operation of legislation passed to give effect to the Convention on the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the territory of Nauru; b) the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

Netherlands

...Désirant user de la faculté d'adhésion réservée aux Etats non-signataires par l'article 12 de la Convention internationale pour l'unification de certaines règles en matière de connaissance, avec Protocole de signature, conclue à Bruxelles, le 25 août 1924, nous avons résolu d'adhérer par les présentes, pour le Royaume en Europe, à ladite Convention, Protocole de signature, d'une manière définitive et promettons de

concourir à son application, tout en Nous réservant le droit, par prescription légale,

- 1) de préciser que dans les cas prévus par l'article 4, par. 2 de c) à p) de la Convention, le porteur du connaissance peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par l'article 4, par. 2 a) de la Convention;
- 2) d'appliquer, en ce qui concerne le cabotage national, l'article 6 à toutes les catégories de marchandises, sans tenir compte de la restriction figurant au dernier paragraphe dudit article, et sous réserve:
 - 1) que l'adhésion à la Convention ait lieu en faisant exclusion du premier paragraphe de l'article 9 de la Convention;
 - 2) que la loi néerlandaise puisse limiter les possibilités de fournir des preuves contraires contre le connaissance.

Norway

...L'adhésion de la Norvège à la Convention internationale pour l'unification de certaines règles en matière de connaissance, signée à Bruxelles, le 25 août 1924, ainsi qu'au Protocole de signature y annexé, est donnée sous la réserve que les autres États contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne la Norvège:

- 1) La loi sur la navigation norvégienne continuera à permettre que dans le cabotage national les connaissances et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées ou soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.
- 2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, dernier alinéa, de la loi norvégienne sur la navigation - le transport maritime entre la Norvège et autres États nordiques, dont les lois sur la navigation contiennent des dispositions analogues.
- 3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome le 23 novembre 1933, ne seront pas affectées par cette Convention.

Papua New Guinea

Reservations: a) the right to exclude from the operation of legislation passed to give effect to the Convention on the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the territories of Papua and New-Guinea; b) the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the 1st paragraph of that Article.

Switzerland

...Conformément à l'alinéa 2 du Protocole de signature, les Autorités fédérales se réservent de donner effet à cet acte international en introduisant dans la législation suisse les règles adoptées par la Convention sous une forme appropriée à cette législation.

United Kingdom

...I Declare that His Britannic Majesty's Government adopt the last reservation in the additional Protocol of the Bills of Lading Convention. I Further Declare that my signature applies only to Great Britain and Northern Ireland. I reserve the right of each of the British Dominions, Colonies, Overseas Possessions and Protectorates, and of each of the territories over which his Britannic Majesty exercises a mandate to accede to this Convention under Article 13. "...In accordance with Article 13 of the above named Convention, I declare that the acceptance of the Convention given by His Britannic Majesty in the instrument of ratification deposited this day extends only to the United Kingdom of Great Britain and Northern Ireland and does not apply to any of His Majesty's Colonies or Protectorates, or territories under suzerainty or mandate.

United States of America

...*And whereas*, the Senate of the United States of America by their resolution of April 1 (legislative day March 13), 1935 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said convention and protocol of signature thereto, 'with the understanding, to be made a part of such ratification, that, not withstanding the provisions of Article 4, Section 5, and the first paragraph of Article 9 of the convention, neither the carrier nor the ship shall in any event be or become liable within the jurisdiction of the United States of America for any loss or damage to or in connection with goods in an amount exceeding 500.00 dollars, lawful money of the United States of America, per package or unit unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

And whereas, the Senate of the United States of America by their resolution of May 6, 1937 (two-thirds of the Senators present concurring therein), did add to and make a part of their aforesaid resolution of April 1, 1935, the following understanding: That should any conflict arise between the provisions of the Convention and the provisions of the Act of April 16, 1936, known as the 'Carriage of Goods by Sea Act', the provisions of said Act shall prevail:

Now therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, having seen and considered the said convention and protocol of signature, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof, subject to the two understandings hereinabove recited and made part of this ratification.

Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissance, signée à Bruxelles le 25 août 1924

Règles de Visby

Bruxelles, 23 février 1968
Entrée en vigueur: 23 juin 1977

Protocol to amend the International Convention for the unification of certain rules of law relating to bills of lading, signed at Brussels on 25 August 1924

Visby Rules

Brussels, 23rd February 1968
Entered into force: 23 June, 1977

Belgium	(r)	6.IX.1978
China		
Hong Kong⁽¹⁾	(r)	1.XI.1980
Croatia	(a)	28.X.1998
Denmark	(r)	20.XI.1975

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Visby Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 3 of the Protocol.

Ecuador	(a)	23.III.1977
Egypt*	(r)	31.I.1983
Finland	(r)	1.XII.1984
France	(r)	10.VII.1977
Georgia	(a)	20.II.1996
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
Russian Federation	(a)	29.IV.1999
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	(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

Reservations

Egypt Arab Republic

La République Arabe d’Egypte déclare dans son instrument de ratification qu’elle ne se considère pas liée par l’article 8 dudit Protocole (cette déclaration est faite en vertu de l’article 9 du Protocole).

Netherlands

Ratification effectuée pour le Royaume en Europe. Le Gouvernement du Royaume des Pays-Bas se réserve le droit, par prescription légale, de préciser que dans les cas prévus par l’article 4, alinéa 2 de c) à p) de la Convention, le porteur du connaissance peut établir la faute personnelle du transporteur ou les fautes de ses préposés non couverts par le paragraphe a).

Poland

Confirmation des réserves faites lors de la signature, à savoir: “La République Populaire de Pologne ne se considère pas liée par l’article 8 du présent Protocole”.

*Protocole DTS**SDR Protocol*

Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissance telle qu'amendée par le Protocole de modification du 23 février 1968.

Protocole DTS

Bruxelles, le 21 décembre 1979
Entrée en vigueur: 14 février 1984

Protocol to amend the International Convention for the unification of certain rules relating to bills of lading as modified by the Amending Protocol of 23rd February 1968.

SDR Protocol

Brussels, 21st December 1979
Entered into force: 14 February 1984

Australia	(a)	16.VII.1993
Belgium	(r)	7.IX.1983
China		
Hong Kong⁽¹⁾	(a)	20.X.1983
Denmark	(a)	3.XI.1983
Finland	(r)	1.XII.1984
France	(r)	18.XI.1986
Georgia	(a)	20.II.1996
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
Russian Federation	(a)	29.IV.1999
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, Isle of Man, Montserrat, Caicos & Turks Island (extension)	(a)	20.X.1983

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the SDR Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 8 of the Protocol.

Reservations

Poland

Poland does not consider itself bound by art. III.

Switzerland

Le Conseil fédéral suisse déclare, en se référant à l'article 4, paragraphe 5, alinéa d) de la Convention internationale du 25 août 1924 pour l'unification de certaines règles en matière de connaissance, telle qu'amendée par le Protocole de modification du 23 février 1968, remplacé par l'article II du Protocole du 21 décembre 1979, que la Suisse calcule de la manière suivante la valeur, en droit de tirage spécial (DTS), de sa monnaie nationale:

La Banque nationale suisse (BNS) communique chaque jour au Fonds monétaire international (FMI) le cours moyen du dollar des Etats Unis d'Amérique sur le marché des changes de Zürich. La contrevaletur en francs suisses d'un DTS est déterminée d'après ce cours du dollar et le cours en dollars DTS, calculé par le FMI. Se fondant sur ces valeurs, la BNS calcule un cours moyen du DTS qu'elle publiera dans son Bulletin mensuel.

**Convention internationale pour
l'unification de certaines
règles relatives aux
Privilèges et hypothèques
maritimes
et protocole de signature**

Bruxelles, 10 avril 1926
entrée en vigueur: 2 juin 1931

**International convention
for the unification of
certain rules relating to
Maritime liens and
mortgages
and protocol of signature**

Brussels, 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)	
<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

*Maritime liens and mortgages 1926**Immunity 1926*

Madagascar	(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

Reservations**Cuba**

(Traduction) L'instrument d'adhésion contient une déclaration relative à l'article 19 de la Convention.

Italy

(Traduction) L'Etat italien se réserve la faculté de ne pas conformer son droit interne à la susdite Convention sur les points où ce droit établit actuellement:

- l'extension des privilèges dont question à l'art. 2 de la Convention, également aux dépendances du navire, au lieu qu'aux seuls accessoires tels qu'ils sont indiqués à l'art. 4;
- la prise de rang, après la seconde catégorie de privilèges prévus par l'art. 2 de la Convention, des privilèges qui couvrent les créances pour les sommes avancées par l'Administration de la Marine Marchande ou de la Navigation intérieure, ou bien par l'Autorité consulaire, pour l'entretien et le rapatriement des membres de l'équipage.

**Convention internationale pour
l'unification de certaines règles
concernant les**

**Immunités des navires
d'Etat**

Bruxelles, 10 avril 1926
et protocole additionnel

Bruxelles, 24 mai 1934
Entrée en vigueur: 8 janvier 1937

**International convention for the
unification of certain rules
concerning the**

**Immunity of State-owned
ships**

Brussels, 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
Madagascar	(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

Reservations

United Kingdom

We reserve the right to apply Article 1 of the Convention to any claim in respect of a ship which falls within the Admiralty jurisdiction of Our courts, or of Our courts in any territory in respect of which We are party to the Convention. We reserve the right, with respect to Article 2 of the Convention to apply in proceedings concerning another High Contracting Party or ship of another High Contracting Party the rules of procedure set out in Chapter II of the European Convention on State Immunity, signed at Basle on the Sixteenth day of May, in the Year of Our Lord One thousand Nine hundred and Seventy-two.

In order to give effect to the terms of any international agreement with a non-Contracting State, We reserve the right to make special provision:

(a) as regards the delay or arrest of a ship or cargo belonging to such a State, and (b) to prohibit seizure of or execution against such a ship or cargo.

*Compétence civile 1952**Civil jurisdiction 1952*

**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 Faso	(a)	23.IV.1958
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
China		
Hong Kong⁽¹⁾	(a)	29.III.1963
Macao⁽²⁾	(a)	23.III.1999
Comoros	(a)	23.IV.1958
Congo	(a)	23.IV.1958
Costa Rica*	(a)	13.VII.1955
Cote 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

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

⁽²⁾ The extension of the Convention to the territory of Macao has been notified by Portugal with declaration deposited on 23 March 1999.

With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

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
Madagascar	(a)	23.IV.1958
Mauritania	(a)	23.IV.1958
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
Romania	(a)	28.XI.1995
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	(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

Reservations

Costa-Rica

(Traduction) Le Gouvernement de la République du Costa Rica, en adhérant à cette Convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon.

En conséquence, la République du Costa Rica ne reconnaît pas comme obligatoires les literas b) et c) du premier paragraphe de l'article premier."

"Conformément au Code du droit international privé approuvé par la sixième Conférence internationale américaine, qui s'est tenue à La Havane (Cuba), le Gouvernement de la République du Costa Rica, en acceptant cette Convention, fait cette réserve expresse que, en aucun cas, il ne renoncera à sa compétence ou juridiction pour appliquer la loi costaricienne en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire costaricien.

Croatia

Reservation made by Yugoslavia and now applicable to Croatia: "Le Gouvernement de la République Populaire Fédérative de Yougoslavie se réserve le droit de se déclarer au moment de la ratification sur le principe de "sistership" prévu à l'article 1° lettre (b) de cette Convention.

Khmere Republic

Le Gouvernement de la République Khmère, en adhérant à ladite convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon. En conséquence, le Gouvernement de la République Khmère ne reconnaît pas le caractère obligatoire des alinéas b) et c) du paragraphe 1° de l'article 1°.

En acceptant ladite convention, le Gouvernement de la République Khmère fait cette réserve expresse que, en aucun cas, elle ne renoncera à sa compétence ou juridiction pour appliquer la loi khmère en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire khmère.

**Convention internationale
pour l'unification de
certaines règles
relatives à la**

**Compétence pénale
en matière d'abordage et
autres événements
de navigation**

Bruxelles, 10 mai 1952
Entrée en vigueur:
20 novembre 1955

**Internationd 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

Anguilla*

Antigua and Barbuda*

Argentina*

Bahamas*

Belgium*

(a)	12.V.1965
(a)	12.V.1965
(a)	19.IV.1961
(a)	12.V.1965
(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
Cayman Islands*	(a)	12.VI.1965
Cameroon	(a)	23.IV.1958
Central African Republic	(a)	23.IV.1958
China		
Hong Kong⁽¹⁾	(a)	29.III.1963
Macao⁽²⁾	(a)	23.III.1999
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
Dominica, Republic of*	(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

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Penal Jurisdiction Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

The following declarations have been made by the Government of the People's Republic of China:

1. The Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right not to observe the provisions of Article 1 of the Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ships to which that ship belongs consented to the institution of criminal or disciplinary proceedings before the judicial or administrative authorities of the Hong Kong Special Administrative Region.

2. In accordance with Article 4 of the Convention, the Government of the People's Republic of China reserves, for the Hong Kong Special Administrative Region, the right to take proceedings in respect of offences committed within the waters under the jurisdiction of the Hong Kong Special Administrative Region.

(2) The extension of the Convention to the territory of Macao has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Compétence pénale 1952**Penal jurisdiction 1952*

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
Lebanon	(r)	19.VII.1975
Luxembourg	(a)	18.II.1991
Madagascar	(a)	23.IV.1958
Mauritania	(a)	23.IV.1958
Mauritius*	(a)	29.III.1963
Montserrat*	(a)	12.VI.1965
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
Romania	(a)	28.XI.1995
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. Helena*	(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	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963
Bermuda	(a)	30.V.1963
Anguilla	(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

Reservations

Antigua, Cayman Island, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent

The Governments of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla (now the independent State of Anguilla), St. Helena and St. Vincent reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs assented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent. They reserve the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent.

Argentina

(Traduction) La République Argentine adhère à la Convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage et autres événements de navigation, sous réserve expresse du droit accordé par la seconde partie de l'article 4, et il est fixé que dans le terme "infractions" auquel cet article se réfère, se trouvent inclus les abordages et tout autre événement de la navigation visés à l'article 1^o de la Convention.

Bahamas

...Subject to the following reservations:

- (a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of the Bahamas;
- (b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of the Bahamas.

Belgium

...le Gouvernement belge, faisant usage de la faculté inscrite à l'article 4 de cette Convention, se réserve le droit de poursuivre les infractions commises dans les eaux territoriales belges.

Belize

...Subject to the following reservations:

- (a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, consented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Belize;
- (b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Belize.

Cayman Islands

See Antigua.

China

Macao

The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right not to observe the provisions of Article 1 of the

Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ships to which that ship belongs consented to the institution of criminal or disciplinary proceedings before the judicial or administrative authorities of the Macao Special Administrative Region.

In accordance with Article 4 of the Convention, the Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to take proceedings in respect of offences committed within the waters under the jurisdiction of the Macao Special Administrative Region.

Within the above ambit, the Government of the People's Republic of China will assume the responsibility for the international rights and obligations that place on a Party to the Convention

Costa-Rica

(Traduction) Le Gouvernement de Costa-Rica ne reconnaît pas le caractère obligatoire des articles 1° and 2° de la présente Convention.

Croatia

Reservation made by Yugoslavia and now applicable to Croatia: "Sous réserve de ratifications ultérieure et acceptant la réserve prévue à l'article 4 de cette Convention. Conformément à l'article 4 de ladite Convention, le Gouvernement yougoslave se réserve le droit de poursuivre les infractions commises dans se propres eaux territoriales".

Dominica, Republic of

... Subject to the following reservations:

- (a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Dominica;
- (b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Dominica.

Egypt

Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler la réserve prévue à l'article 4, alinéa 2. Confirmation expresse de la réserve faite au moment de la signature.

Fiji

The Government of Fiji reserves the right not to observe the provisions of article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respect that ship or any class of ship to which that ship belongs consented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Fiji. The Government of Fiji reserves the right under article 4 of this Convention to take proceedings in respect of offences committed within the territorial water of Fiji.

France

Au nom du Gouvernement de la République Française je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de la convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage.

Germany, Federal Republic of

(Traduction) Sous réserve du prescrit de l'article 4, alinéa 2.

Grenada

Same reservations as the Republic of Dominica

Guyana

Same reservations as the Republic of Dominica

Italy

Le Gouvernement de la République d'Italie se réfère à l'article 4, paragraphe 2, et se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Khmere Republic

Le Gouvernement de la République Khmère, d'accord avec l'article 4 de ladite convention, se réserve le droit de poursuivre les infractions commises dans ses eaux territoriales.

Kiribati

Same reservations as the Republic of Dominica

Mauritius

Same reservations as the Republic of Dominica

Montserrat

See Antigua.

Netherlands

Conformément à l'article 4 de cette Convention, le Gouvernement du Royaume des Pays-Bas, se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Nigeria

The Government of the Federal Republic of Nigeria reserve the right not to implement the provisions of Article 1 of the Convention in any case where that Government has an agreement with any other State that is applicable to a particular collision or other incident of navigation and if such agreement is inconsistent with the provisions of the said Article 1. The Government of the Federal Republic of Nigeria reserves the right, in accordance with Article 4 of the Convention, to take proceedings in respect of offences committed within the territorial waters of the Federal Republic of Nigeria.

North Borneo

Same reservations as the Republic of Dominica

Portugal

Au nom du Gouvernement portugais, je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de cette Convention.

Sarawak

Same reservations as the Republic of Dominica

St. Helena

See Antigua.

St. Kitts-Nevis

See Antigua.

St. Lucia

Same reservations as the Republic of Dominica

St. Vincent

See Antigua.

Seychelles

Same reservations as the Republic of Dominica

Solomon Isles

Same reservations as the Republic of Dominica

Spain

La Délégation espagnole désire, d'accord avec l'article 4 de la Convention sur la compétence pénale en matière d'abordage, se réserver le droit au nom de son Gouvernement, de poursuivre les infractions commises dans ses eaux territoriales. Confirmation expresse de la réserve faite au moment de la signature.

Tonga

Same reservations as the Republic of Dominica

Tuvalu

Same reservations as the Republic of Dominica

United Kingdom

1. - Her Majesty's Government in the United Kingdom reserves the right not to apply the provisions of Article 1 of this Convention in any case where there exists between Her Majesty's Government and the Government of any other State an agreement which is applicable to a particular collision or other incident of navigation and is inconsistent with that Article.

2. - Her Majesty's Government in the United Kingdom reserves the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

...subject to the following reservations:

(1) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs consented to the institution of criminal and disciplinary proceedings before the judicial or administrative authorities of the United Kingdom.

(2) In accordance with the provisions of Article 4 of the said Convention, the Government of the United Kingdom of Great Britain and Northern Ireland reserve the right to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

(3) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservation provided for in Article 4 of the said Convention...

Vietnam

Comme il est prévu à l'article 4 de la même convention, le Gouvernement vietnamien se réserve le droit de poursuivre les infractions commises dans la limite de ses eaux territoriales.

**Convention internationale pour
l'unification de certaines
règles sur la
Saisie conservatoire
des navires de mer**

Bruxelles, 10 mai 1952

Entrée en vigueur: 24 février 1956

**International convention for the
unification of certain rules
relating to
Arrest of sea-going ships**

Brussels, 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
China		
Hong Kong⁽¹⁾	(a)	29.III.1963
Macao⁽²⁾	(a)	23.IX.1999
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
Cuba*	(a)	21.XI.1983
Denmark	(r)	2.V.1989
Djibouti	(a)	23.IV.1958
Dominica, Republic of*	(a)	12.V.1965
Egypt*	(r)	24.VIII.1955
Fiji	(a)	29.III.1963
Finland	(r)	21.XII.1995
France	(r)	25.V.1957
Overseas Territories	(a)	23.IV.1958
Gabon	(a)	23.IV.1958

⁽¹⁾ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Arrest Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

⁽²⁾ The extension of the Convention to the territory of Macao as from 23 September 1999 has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Saisie des navires 1952**Arrest of ships 1952*

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
Khmere Republic*	(a)	12.XI.1956
Kiribati*	(a)	21.IX.1965
Latvia	(a)	17.V.1993
Luxembourg	(a)	18.II.1991
Madagascar		23.IV.1958
Marocco	(a)	11.VII.1990
Mauritania	(a)	23.IV.1958
Mauritius*	(a)	29.III.1963
Namibia	(a)	14.III.2000
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
Romania	(a)	28.XI.1995
Russian Federation*	(a)	29.IV.1999
St. Kitts and Nevis*	(a)	12.V.1965
St. Lucia*	(a)	12.V.1965
St. Vincent and the Grenadines*	(a)	12.V.1965
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
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
Turks Isles and Caicos*	(a)	21.IX.1965
Tuvalu*	(a)	21.IX.1965
United Kingdom of Great Britain* and Northern Ireland	(r)	18.III.1959
United Kingdom (Overseas Territories)*		
Gibraltar	(a)	29.III.1963
British Virgin Islands	(a)	29.V.1963

Bermuda	(a)	30.V.1963
Anguilla, Caiman Islands,		
Montserrat, St. Helena	(a)	12.V.1965
Guernsey	(a)	8.XII.1966
Falkland Islands and dependencies	(a)	17.X.1969
Zaire	(a)	17.VII.1967

Reservations

Antigua

...Reserves the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.

Bahamas

...With reservation of the right not to apply the provisions of this Convention to warships or to vessels owned by or in service of a State.

Belize

Same reservation as the Bahamas.

Costa Rica

(Traduction) Premièrement: le 1er paragraphe de l'article 3 ne pourra pas être invoqué pour saisir un navire auquel la créance ne se rapporte pas et qui n'appartient plus à la personne qui était propriétaire du navire auquel cette créance se rapporte, conformément au registre maritime du pays dont il bat pavillon et bien qu'il lui ait appartenu.

Deuxièmement: que Costa Rica ne reconnait pas le caractère obligatoire des alinéas a), b), c), d), e) et f) du paragraphe 1er de l'article 7, étant donné que conformément aux lois de la République les seuls tribunaux compétents quant au fond pour connaître des actions relatives aux créances maritimes, sont ceux du domicile du demandeur, sauf s'il s'agit des cas visés sub o), p) et q) à l'alinéa 1er de l'article 1, ou ceux de l'Etat dont le navire bat pavillon.

Le Gouvernement de Costa Rica, en ratifiant ladite Convention, se réserve le droit d'appliquer la législation en matière de commerce et de travail relative à la saisie des navires étrangers qui arrivent dans ses ports.

Côte d'Ivoire

Confirmation d'adhésion de la Côte d'Ivoire. Au nom du Gouvernement de la République de Côte d'Ivoire, nous, Ministre des Affaires Etrangères, confirmons que par Succession d'Etat, la République de Côte d'Ivoire est devenue, à la date de son accession à la souveraineté internationale, le 7 août 1960, partie à la Convention internationale pour l'unification de certaines règles sur la saisie conservatoire des navires de mer, signée à Bruxelles le 10 mai 1952, qu'elle l'a été de façon continue depuis lors et que cette Convention est aujourd'hui, toujours en vigueur à l'égard de la Côte d'Ivoire.

Croatia

Reservation made by Yugoslavia and now applicable to Croatia: "...en réservant conformément à l'article 10 de ladite Convention, le droit de ne pas appliquer ces dispositions à la saisie d'un navire pratiquée en raison d'une créance maritime visée au point o) de l'article premier et d'appliquer à cette saisie la loi nationale".

Cuba

(Traduction) L'instrument d'adhésion contient les réserves prévues à l'article 10 de la Convention celles de ne pas appliquer les dispositions de la Convention aux navires de guerre et aux navires d'Etat ou au service d'un Etat, ainsi qu'une déclaration relative à l'article 18 de la Convention.

Dominica, Republic of

Same reservation as Antigua

*Saisie des navires 1952**Arrest of ships 1952***Egypt**

Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler les réserves prévues à l'article 10.

Confirmation expresse des réserves faites au moment de la signature.

Germany, Federal Republic of

(Traduction) ...sous réserve du prescrit de l'article 10, alinéas a et b.

Grenada

Same reservation as Antigua.

Guyana

Same reservation as the Bahamas.

Ireland

Ireland reserves the right not to apply the provisions of the Convention to warships or to ships owned by or in service of a State.

Italy

Le Gouvernement de la République d'Italie se réfère à l'article 10, par. (a) et (b), et se réserve:

- (a) le droit de ne pas appliquer les dispositions de la présente Convention à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux o) et p) de l'article premier et d'appliquer à cette saisie sa loi nationale;
- (b) le droit de ne pas appliquer les dispositions du premier paragraphe de l'article 3 à la saisie pratiquée sur son territoire en raison des créances prévues à l'alinéa q) de l'article 1.

Khmere Republic

Le Gouvernement de la République Khmère en adhérant à cette convention formule les réserves prévues à l'article 10.

Kiribati

Same reservation as the Bahamas.

Mauritius

Same reservation as Antigua.

Netherlands

Réserves formulées conformément à l'article 10, paragraphes (a) et (b):

- les dispositions de la Convention précitée ne sont pas appliquées à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux alinéas o) et p) de l'article 1, saisie à laquelle s'applique le loi néerlandaise; et
- les dispositions du premier paragraphe de l'article 3 ne sont pas appliquées à la saisie pratiquée sur le territoire du Royaume des Pays-Bas en raison des créances prévues à l'alinéa q) de l'article 1.

Cette ratification est valable depuis le 1er janvier 1986 pour le Royaume des Pays-Bas, les Antilles néerlandaises et Aruba.

Nigeria

Same reservation as Antigua.

North Borneo

Same reservation as Antigua.

Russian Federation

The Russian Federation reserves the right not to apply the rules of the International Convention for the unification of certain rules relating to the arrest of sea-going ships of 10 May 1952 to warships, military logistic ships and to other vessels owned or operated by the State and which are exclusively used for non-commercial purposes.

Pursuant to Article 10, paragraphs (a) and (b), of the International Convention for the

unification of certain rules relating to the arrest of sea-going ships, the Russian Federation reserves the right not to apply:

- the rules of the said Convention to the arrest of any ship for any of the claims enumerated in Article 1, paragraph 1, subparagraphs (o) and (p), of the Convention, but to apply the legislation of the Russian Federation to such arrest;
- the first paragraph of Article 3 of the said Convention to the arrest of a ship, within the jurisdiction of the Russian Federation, for claims set out in Article 1, paragraph 1, subparagraph (q), of the Convention.

St. Kitts and Nevis

Same reservation as Antigua.

St. Lucia

Same reservation as Antigua.

St. Vincent and the Grenadines

Same reservation as Antigua.

Sarawak

Same reservation as Antigua.

Seychelles

Same reservation as the Bahamas.

Solomon Islands

Same reservation as the Bahamas.

Tonga

Same reservation as Antigua.

Turk Isles and Caicos

Same reservation as the Bahamas.

Tuvalu

Same reservation as the Bahamas.

United Kingdom of Great Britain and Northern Ireland

... Subject to the following reservations:

1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

United Kingdom (Overseas Territories)

Anguilla, Bermuda, British Virgin Islands, Caiman Islands, Falkland Islands and Dependencies, Gibraltar, Guernsey, Hong Kong, Montserrat, St. Helena, Turks Isles and Caicos

... Subject to the following reservations:

1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

*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**

Bruxelles, le 10 octobre 1957
Entrée en vigueur: 31 mai 1968

**International convention
relating to the
Limitation
of the liability
of owners
of sea-going ships
and protocol of signature**

Brussels, 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
China Macao ⁽¹⁾	(a)	20.XII.1999
Denmark* (<i>denunciation – 1.IV.1984</i>)	(r)	1.III.1965
Dominica, Republic of*	(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

⁽¹⁾ The extension of the Convention to the territory of Macao as from 23 September 1999 has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

*Limitation de responsabilité 1957**Limitation of liability 1957*

Japan	(r)	1.III.1976
<i>(denunciation – 19.V.1983)</i>		
Kiribati*	(a)	21.VIII.1964
Lebanon	(a)	23.XII.1994
Madagascar	(a)	13.VII.1965
Mauritius*	(a)	21.VIII.1964
Monaco*	(a)	24.I.1977
Netherlands	(r)	10.XII.1965
<i>(denunciation – 1.IX.1989)</i>		
Aruba*	(r)	1.I.1986
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
St. Lucia*	(a)	4.VIII.1965
St. Vincent and the Grenadines	(a)	4.VIII.1965
Seychelles*	(a)	21.VIII.1964
Singapore*	(a)	17.IV.1963
Solomon Islands*	(a)	21.VIII.1964
Spain*	(r)	16.VII.1959
<i>(denunciation - 04.I. 2006)</i>		
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, 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

Reservations**Bahamas**

...Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Barbados

Same reservation as Bahamas

China

The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right not to be bound by paragraph 1.(c) of Article 1 of the

Convention. The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to regulate by specific provisions of laws of the Macao Special Administrative Region the system of limitation of liability to be applied to ships of less than 300 tons. With reference to the implementation of the Convention in the Macao Special Administrative Region, the Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to implement the Convention either by giving it the force of law in the Macao Special Administrative Region, or by including the provisions of the Convention, in appropriate form, in legislation of the Macao Special Administrative Region. Within the above ambit, the Government of the People's Republic of China will assume the responsibility for the international rights and obligations that place on a Party to the Convention.

Denmark

Le Gouvernement du Danemark se réserve le droit:

- 1) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
- 2) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Dominica, Republic of

Same reservation as Bahamas

Egypt Arab Republic

Reserves the right:

- 1) to exclude the application of Article 1, paragraph (1)(c);
- 2) to regulate by specific provisions of national law the system of limitation to be applied to ships of less than 300 tons;
- 3) on 8 May, 1984 the Egyptian Arab Republic has verbally notified the denunciation in respect of this Convention. This denunciation will become operative on 8 May, 1985.

Fiji

Le 22 août 1972 a été reçue au Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement une lettre de Monsieur K.K.T. Mara, Premier Ministre et Ministre des Affaires étrangères de Fidji, notifiant qu'en ce qui concerne cette Convention, le Gouvernement de Fidji reprend, à partir de la date de l'indépendance de Fidji, c'est-à-dire le 10 octobre 1970, les droits et obligations souscrits antérieurement par le Royaume-Uni, avec les réserves figurant ci-dessous.

- 1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
- 2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.

Furthermore in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of signature, the Government of Fiji declare that the said Convention as such has not been made part in Fiji law, but that the appropriate provisions to give effect thereto have been introduced in Fiji law.

Ghana

The Government of Ghana in acceding to the Convention reserves the right:

- 1) To exclude the application of Article 1, paragraph (1)(c);
- 2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
- 3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Grenada*Same reservation as Bahamas***Guyana***Same reservation as Bahamas***Iceland**

The Government of Iceland reserves the right:

- 1) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
- 2) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

India

Reserve the right:

- 1) To exclude the application of Article 1, paragraph (1)(c);
- 2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
- 3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Iran

Le Gouvernement de l'Iran se réserve le droit:

- 1) d'exclure l'application de l'article 1, paragraphe (1)(c);
- 2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
- 3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Israel

The Government of Israel reserves to themselves the right to:

- 1) exclude from the scope of the Convention the obligations and liabilities stipulated in Article 1(1)(c);
- 2) regulate by provisions of domestic legislation the limitation of liability in respect of ships of less than 300 tons of tonnage;

The Government of Israel reserves to themselves the right to give effect to this Convention either by giving it the force of law or by including in its national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Kiribati*Same reservation as Bahamas***Mauritius***Same reservation as Bahamas***Monaco**

En déposant son instrument d'adhésion, Monaco fait les réserves prévues au paragraphe 2° du Protocole de signature.

Netherlands-Aruba

La Convention qui était, en ce qui concerne le Royaume de Pays-Bas, uniquement applicable au Royaume en Europe, a été étendue à Aruba à partir du 16.XII.1986 avec effet rétroactif à compter du 1er janvier 1986.

La dénonciation de la Convention par les Pays-Bas au 1er septembre 1989, n'est pas valable pour Aruba.

Note: Le Gouvernement des Pays-Bas avait fait les réservations suivantes:

Le Gouvernement des Pays-Bas se réserve le droit:

- 1) d'exclure l'application de l'article 1, paragraphe (1)(c);
- 2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
- 3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

... Conformément au paragraphe (2)(c) du Protocole de signature Nous nous réservons de donner effet à la présente Convention en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Papua New Guinea

- (a) The Government of Papua New Guinea excludes paragraph (1)(c) of Article 1.
- (b) The Government of Papua New Guinea will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
- (c) The Government of Papua New Guinea shall give effect to the said Convention by including the provisions of the said Convention in the National Legislation of Papua New Guinea.

Portugal

(Traduction) ...avec les réserves prévues aux alinéas a), b) et c) du paragraphe deux du Protocole de signature...

St. Lucia

Same reservation as Bahamas

Seychelles

Same reservation as Bahamas

Singapore

Le 13 septembre 1977 à été reçue une note verbale datée du 6 septembre 1977, émanant du Ministère des Affaires étrangères de Singapour, par laquelle le Gouvernement de Singapour confirme qu'il se considère lié par la Convention depuis le 31 mai 1968, avec les réserves suivantes:

...Subject to the following reservations:

- a) the right to exclude the application of Article 1, paragraph (1)(c); and
- b) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons. The Government of the Republic of Singapore declares under sub-paragraph (c) of paragraph (2) of the Protocol of signature that provisions of law have been introduced in the Republic of Singapore to give effect to the Convention, although the Convention as such has not been made part of Singapore law.

Solomon Islands

Same reservation as Bahamas

Spain

Le Gouvernement espagnol se réserve le droit:

- 1) d'exclure du champ d'application de la Convention les obligations et les responsabilités prévues par l'article 1, paragraphe (1)(c);
- 2) de régler par les dispositions particulières de sa loi nationale le système de limitation de responsabilité applicable aux propriétaires de navires de moins de 300 tonneaux de jauge;
- 3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Tonga

Reservations:

- 1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
- 2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga will regulate by specific provisions of national law the system of liability to be applied to ships of less than 300 tons.

Tuvalu*Same reservation as Bahamas***United Kingdom of Great Britain and Northern Ireland**

Subject to the following observations:

- 1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
- 2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
- 3) The Government of the United Kingdom of Great Britain and Northern Ireland also reserve the right, in extending the said Convention to any of the territories for whose international relations they are responsible, to make such extension subject to any or all of the reservations set out in paragraph (2) of the said Protocol of Signature. Furthermore, in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland declare that the said Convention as such has not been made part of the United Kingdom law, but that the appropriate provisions to give effect thereto have been introduced in United Kingdom law.

United Kingdom Overseas Territories

Anguilla, Bermuda, British Antarctic Territories, British Virgin Islands, Caiman Islands, Caicos and Turks Isles, Falkland and Dependencies, Gibraltar, Guernsey and Jersey, Hong Kong, Isle of Man, Montserrat

... Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Protocole portant modification de la convention internationale sur la Limitation de la responsabilité des propriétaires de navires de mer du 10 octobre 1957

Bruxelles le 21 décembre 1979
Entré en vigueur: 6 octobre 1984

Australia
Belgium

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

(r) 30.XI.1983
(r) 7.IX.1983

*Stowaways 1957**Carriage of passengers 1961*

Luxembourg	(a)	18.II.1991
Poland	(r)	6.VII.1984
Portugal	(r)	30.IV.1982
Spain	(r)	14.V.1982
<i>(denunciation - 04.I. 2006)</i>		
Switzerland	(r)	20.I.1988
United Kingdom of Great Britain and Northern Ireland	(r)	2.III.1982
<i>(denunciation - 1.XII.1985)</i>		
<i>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)</i>		

**Convention internationale sur les
Passagers Clandestins**

Bruxelles, 10 octobre 1957
Pas encore en vigueur

**International convention relating to
Stowaways**

Brussels, 10th October 1957
Not yet in force

Belgium	(r)	31.VII.1975
Denmark	(r)	16.XII.1963
Finland	(r)	2.II.1966
Italy	(r)	24.V.1963
Luxembourg	(a)	18.II.1991
Madagascar	(a)	13.VII.1965
Morocco	(a)	22.I.1959
Norway	(r)	24.V.1962
Peru	(r)	23.XI.1961
Sweden	(r)	27.VI.1962

**Convention internationale
pour l'unification de certaines
règles en matière de
Transport de passagers
par mer
et protocole**

Bruxelles, 29 avril 1961
Entrée en vigueur: 4 juin 1965

**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

Algeria	(a)	2.VII.1973
Cuba*	(a)	7.I.1963
France	(r)	4.III.1965
<i>(denunciation - 3.XII.1975)</i>		
Haïti	(a)	19.IV.1989
Iran	(a)	26.IV.1966

<i>Carriage of passengers 1961</i>		<i>Nuclear ships 1962</i>
Madagascar	(a)	13.VII.1965
Morocco*	(r)	15.VII.1965
Peru	(a)	29.X.1964
Switzerland	(r)	21.I.1966
Tunisia	(a)	18.VII.1974
United Arab Republic*	(r)	15.V.1964
Zaire	(a)	17.VII.1967

Reservations

Cuba

(Traduction) ...Avec les réserves suivantes:

- 1) De ne pas appliquer la Convention aux transports qui, d'après sa loi nationale, ne sont pas considérés comme transports internationaux.
- 2) De ne pas appliquer la Convention, lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.
- 3) De donner effet à cette Convention, soit en lui donnant force de loi, soit en incluant dans sa législation nationale les dispositions de cette Convention sous une forme appropriée à cette législation.

Morocco

...Sont et demeurent exclus du champ d'application de cette convention:

- 1) les transports de passagers effectués sur les navires armés au cabotage ou au bornage, au sens donné à ces expressions par l'article 52 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par le dahir du 29 Chaabane 1380 (15 février 1961).
 - 2) les transports internationaux de passagers lorsque le passager et le transporteur sont tous deux de nationalité marocaine.
- Les transports de passagers visés...ci-dessus demeurent régis en ce qui concerne la limitation de responsabilité, par les disposition de l'article 126 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par la dahir du 16 Joumada II 1367 (26 avril 1948).

United Arab Republic

Sous les réserves prévues aux paragraphes (1), (2) et (3) du Protocole.

Convention internationale relative à la responsabilité des exploitants de Navires nucléaires et protocole additionnel

Bruxelles, 25 mai 1962
Pas encore en vigueur

International convention relating to the liability of operators of Nuclear ships and additional protocol

Brussels, 25th May 1962
Not yet in force

Lebanon	(r)	3.VI.1975
Madagascar	(a)	13.VII.1965
Netherlands*	(r)	20.III.1974
Portugal	(r)	31.VII.1968
Suriname	(r)	20.III.1974
Syrian Arab Republic	(a)	1.VIII.1974
Zaire	(a)	17.VII.1967

*Carriage of passengers' luggage 1967**Vessels under construction 1967***Reservations****Netherlands**

Par note verbale datée du 29 mars 1976, reçue le 5 avril 1976, par le Gouvernement belge, l'Ambassade des Pays-Bas à Bruxelles a fait savoir:

Le Gouvernement du Royaume des Pays-Bas tient à déclarer, en ce qui concerne les dispositions du Protocole additionnel faisant partie de la Convention, qu'au moment de son entrée en vigueur pour le Royaume des Pays-Bas, ladite Convention y devient impérative, en ce sens que les prescriptions légales en vigueur dans le Royaume n'y seront pas appliquées si cette application est inconciliable avec les dispositions de la Convention.

**Convention internationale
pour l'unification de certaines
règles en matière de
Transport de bagages
de passagers par mer**

Bruxelles, 27 mai 1967
Pas en vigueur

**International Convention
for the unification of
certain rules relating to
Carriage of passengers'
luggage by sea**

Brussels, 27th May 1967
Not in force

Algeria
Cuba*

(a) 2.VII.1973
(a) 15.II.1972

Reservations**Cuba**

(Traduction) Le Gouvernement révolutionnaire de la République de Cuba, Partie Contractante, formule les réserves formelles suivantes:

- 1) de ne pas appliquer cette Convention lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.
- 3) en donnant effet à cette Convention, la Partie Contractante pourra, en ce qui concerne les contrats de transport établis à l'intérieur de ses frontières territoriales pour un voyage dont le port d'embarquement se trouve dans lesdites limites territoriales, prévoir dans sa législation nationale la forme et les dimensions des avis contenant les dispositions de cette Convention et devant figurer dans le contrat de transport. De même, le Gouvernement révolutionnaire de la République de Cuba déclare, selon le prescrit de l'article 18 de cette Convention, que la République de Cuba ne se considère pas liée par l'article 17 de ladite Convention.

**Convention internationale relative à
l'inscription des droits relatifs aux**

Navires en construction

Bruxelles, 27 mai 1967
Pas encore en vigueur

**International Convention relating
to the registration of rights
in respect of
Vessels under construction**

Brussels, 27th May 1967
Not yet in force

Croatia	(r)	3.V.1971
Greece	(r)	12.VII.1974
Norway	(r)	13.V.1975
Sweden	(r)	13.XI.1975
Syrian Arab Republic	(a)	1.XIII.1974

**Convention internationale
pour l'unification de
certaines règles relatives aux
Privilèges et hypothèques
maritimes**

Bruxelles, 27 mai 1967
Pas encore en vigueur

**International Convention
for the unification of
certain rules relating to
Maritime liens and
mortgages**

Brussels, 27th May 1967
Not yet in force

Denmark*	(r)	23.VIII.1977
Morocco*	(a)	12.II.1987
Norway*	(r)	13.V.1975
Sweden*	(r)	13.XI.1975
Syrian Arab Republic	(a)	1.VIII.1974

Reservations

Denmark

L'instrument de ratification du Danemark est accompagné d'une déclaration dans laquelle il est précisé qu'en ce qui concerne les Iles Féroé les mesures d'application n'ont pas encore été fixées.

Morocco

L'instrument d'adhésion est accompagné de la réserve suivante: Le Royaume du Maroc adhère à la Convention Internationale pour l'unification de certaines règles relatives aux privilèges et hypothèques maritimes faite à Bruxelles le 27 mai 1967, sous réserve de la non-application de l'article 15 de la dite Convention.

Norway

Conformément à l'article 14 le Gouvernement du Royaume de Norvège fait les réserves suivantes:

- 1) mettre la présente Convention en vigueur en incluant les dispositions de la présente Convention dans la législation nationale suivant une forme appropriée à cette législation;
- 2) faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

Sweden

Conformément à l'article 14 la Suède fait les réserves suivantes:

- 1) de mettre la présente Convention en vigueur en incluant les dispositions de la Convention dans la législation nationale suivant une forme appropriée à cette législation;
- 2) de faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE IMO CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

r	=	ratification
a	=	accession
A	=	acceptance
AA	=	approval
S	=	definitive signature
s	=	signature by confirmation

Editor's notes

1. This Status is based on advices from the International Maritime Organisation and reflects the situation as at 31st December, 1998.
2. The dates mentioned are the dates of the deposit of instruments.
3. The asterisk after the name of a State Party indicates that that State has made declarations, reservations or statements the text of which is published after the relevant status of ratifications and accessions.
- 4 The dates mentioned in respect of the denunciation are the dates when the denunciation takes effect.

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS DE L'OMI EN MATIERE DE DROIT MARITIME PRIVE

Notes de l'éditeur

1. Cet état est basé sur des informations recues de l'Organisation Maritime Internationale et reflète la situation au 31 décembre 1998.
2. Les dates mentionnées sont les dates du dépôt des instruments.
3. L'asterisque qui suit le nom d'un Etat indique que cet Etat a fait une déclaration, une reserve ou une communication dont le texte est publié à la fin de chaque état de ratifications et adhesions.
4. Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonciation prend effet.

CLC 1969

**International Convention on
Civil liability
for oil pollution damage**
(CLC 1969)

 Done at Brussels, 29 November 1969
 Entered into force: 19 June 1975

**Convention Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les hydrocarbures
(CLC 1969)**

 Signée à Bruxelles, le 29 novembre 1969
 Entrée en vigueur: 19 juin 1975

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	
Algeria (accession)	14.VI.1974	19.VI.1975	3.VIII.1999
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	14.VI.2001
Australia (ratification)¹	7.XI.1983	5.II.1984	15.V.1998
Bahamas (accession)	22.VII.1976	20.X.1976	15.V.1998
Bahrain (accession)	3.V.1996	1.VIII.1996	15.V.1998
Barbados (accession)	6.V.1994	4.VIII.1994	7.VII.1999
Belgium (ratification)¹	12.I.1977	12.IV.1977	6.X.1999
Belize (accession)	2.IV.1991	1.VII.1991	27.XI.1999
Benin (accession)	1.XI.1985	30.I.1986	
Brazil (ratification)	17.XII.1976	17.III.1977	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	31.I.2003
Cambodia (accession)	28.XI.1994	26.II.1995	
Cameroon (ratification)	14.V.1984	12.VIII.1984	15.X.2002
Canada (accession)	24.I.1989	24.IV.1989	29.V.1999
Chile (accession)	2.VIII.1977	31.X.1977	
China² (accession)¹	30.I.1980	29.IV.1980	5.I.2000
Colombia (accession)	26.III.1990	24.VI.1990	
Costa Rica (accession)	8.XII.1997	8.III.1998	
Côte d'Ivoire (ratification)	21.VI.1973	19.VI.1975	
Croatia (succession)	—	8.X.1991	30.VII.1999
Cyprus (accession)	19.VI.1989	17.IX.1989	15.V.1998
Denmark (accession)	2.IV.1975	19.VI.1975	15.V.1998
Djibouti (accession)	1.III.1990	30.V.1990	17.V.2002
Dominican Republic (ratification)	2.IV.1975	19.VI.1975	
Ecuador (accession)	23.XII.1976	23.III.1977	
Egypt (accession)	3.II.1989	4.V.1989	
El Salvador (accession)	2.I.2002	2.IV.2002	
Equatorial Guinea (accession)	24.IV.1996	23.VII.1996	
Estonia (accession)	1.XII.1992	1.III.1993	
Fiji (accession)	15.VIII.1972	19.VI.1975	30.XI.2000
Finland (ratification)	10.X.1980	8.I.1981	15.V.1998

CLC 1969

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
France (ratification)	17.III.1975	19.VI.1975	15.V.1998
Gabon (accession)	21.I.1982	21.IV.1982	31.V.2003
Gambia (accession)	1.XI.1991	30.I.1992	
Georgia (accession)	19.IV.1994	18.VII.1994	
Germany ³ (ratification) ¹	20.V.1975	18.VIII.1975 ⁴	15.V.1998
Ghana (ratification)	20.IV.1978	19.VII.1978	
Greece (accession)	29.VI.1976	27.IX.1976	15.V.1998
Guatemala (acceptance) ¹	20.X.1982	18.I.1983	
Guyana (accession)	10.XII.1997	10.III.1998	
Honduras (accession)	2.XII.1998	2.III.1999	
Iceland (ratification)	17.VII.1980	15.X.1980	10.II.2001
India (accession)	1.V.1987	30.VII.1987	21.VI.2001
Indonesia (ratification)	1.IX.1978	30.XI.1978	
Ireland (ratification)	19.XI.1992	17.II.1993	15.V.1998
Italy (ratification) ¹	27.II.1979	28.V.1979	8.X.2000
Japan (accession)	3.VI.1976	1.IX.1976	15.V.1998
Jordan (accession)	14.X.2003	12.I.2004	
Kazakhstan (accession)	7.III.1994	5.VI.1994	
Kenya (accession)	15.XII.1992	15.III.1993	7.VII.2001
Kuwait (accession)	2.IV.1981	1.VII.1981	
Latvia (accession)	10.VII.1992	8.X.1992	
Lebanon (accession)	9.IV.1974	19.VI.1975	
Liberia (accession)	25.IX.1972	19.VI.1975	15.V.1998
Luxembourg (accession)	14.II.1991	15.V.1991	
Malaysia (accession)	6.I.1995	6.IV.1995	
Maldives (accession)	16.III.1981	14.VI.1981	
Malta (accession)	27.IX.1991	26.XII.1991	6.I.2001
Marshall Islands (accession)	24.I.1994	24.IV.1994	15.V.1998
Mauritania (accession)	17.XI.1995	15.II.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	6.XII.2000
Mexico (accession)	13.V.1994	11.VIII.1994	15.V.1998
Monaco (ratification)	21.VIII.1975	19.XI.1975	15.V.1998
Mongolia (accession)	3.III.2003	1.VI.2003	
Morocco (accession)	11.IV.1974	19.VI.1975	25.X.2001
Mozambique (accession)	23.XII.1996	23.III.1997	26.IV.2003
Netherlands (ratification)	9.IX.1975	8.XII.1975	15.V.1998
New Zealand (accession)	27.IV.1976	26.VII.1976	25.VI.1999
Nicaragua (accession)	4.VI.1996	2.IX.1996	
Nigeria (accession)	7.V.1981	5.VIII.1981	24.V.2003
Norway (accession)	21.III.1975	19.VI.1975	15.V.1998
Oman (accession)	24.I.1985	24.IV.1985	15.V.1998
Panama (ratification)	7.I.1976	6.IV.1976	11.V.2000
Papua New Guinea (accession)	12.III.1980	10.VI.1980	23.I.2002
Peru (accession) ¹	24.II.1987	25.V.1987	
Poland (ratification)	18.III.1976	16.VI.1976	21.XII.2000
Portugal (ratification)	26.XI.1976	24.II.1977	
Qatar (accession)	2.VI.1988	31.VIII.1988	20.XI.2002

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	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Republic of Korea (accession)	18.XII.1978	18.III.1979	15.V.1998
Russian Federation⁵ (accession)¹	24.VI.1975	22.IX.1975	20.III.2001
Saint Kitts and Nevis (accession)¹	14.IX.1994	13.XII.1994	
Saint Vincent and the Grenadines (accession)	19.IV.1989	18.VII.1989	9.X.2002
Sao Tome and Principe (accession)	29.X.1998	27.I.1999	
Saudi Arabia (accession)¹	15.IV.1993	14.VII.1993	
Senegal (accession)	27.III.1972	19.VI.1975	
Serbia and Montenegro (succession)	—	27.IV.1992	
Seychelles (accession)	12.IV.1988	11.VII.1988	23.VII.2000
Sierra Leone (accession)	13.VIII.1993	11.XI.1993	4.VI.2002
Singapore (accession)	16.IX.1981	15.XII.1981	31.XII.1998
Slovenia (succession)	—	25.VI.1991	19.VII.2001
South Africa (accession)	17.III.1976	15.VI.1976	
Spain (ratification)	8.XII.1975	7.III.1976	15.V.1998
Sri Lanka (accession)	12.IV.1983	11.VII.1983	22.I.2000
Sweden (ratification)	17.III.1975	19.VI.1975	15.V.1998
Switzerland (ratification)	15.XII.1987	14.III.1988	15.V.1998
Syrian Arab Republic (accession)¹	6.II.1975	19.VI.1975	
Tonga (accession)	1.II.1996	1.V.1996	10.XII.2000
Tunisia (accession)	4.V.1976	2.VIII.1976	15.V.1998
Tuvalu (succession)	—	1.X.1978	
United Arab Emirates (accession)	15.XII.1983	14.III.1984	
United Kingdom (ratification)	17.III.1975	19.VI.1975	15.V.1998
Vanuatu (accession)	2.II.1983	3.V.1983	18.II.2000
Venezuela (accession)	21.I.1992	20.IV.1992	22.VII.1999
Yemen (accession)	6.III.1979	4.VI.1979	

Number of Contracting States: 45

The Convention applies provisionally in respect of the following States:

Kiribati

Solomon Islands

¹ With a declaration, reservation or statement.

² Applied to the Hong Kong Special Administrative Region with effect from 1.VII.1997. Effective date of denunciation: 5.I.2000.

³ On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded to the Convention on 13.III.1978.

⁴ In accordance with the intention expressed by the Government of the Federal Republic of Germany and based on its interpretation of article XV of the Convention.

⁵ As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

Declarations, Reservations and Statements

Australia

The instrument of ratification of the Commonwealth of Australia was accompanied by the following declarations:

“Australia has taken note of the reservation made by the Union of Soviet Socialist Republics on its accession on 24 June 1975 to the Convention, concerning article XI(2) of the Convention. Australia wishes to advise that it is unable to accept the reservation. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. It is also Australia’s understanding that the above-mentioned reservation is not intended to have the effect that the Union of Soviet Socialist Republics may claim judicial immunity of a foreign State with respect to ships owned by it, used for commercial purposes and operated by a company which in the Union of Soviet Socialist Republic is registered as the ship’s operator, when actions for compensation are brought against the company in accordance with the provisions of the Convention. Australia also declares that, while being unable to accept the Soviet reservation, it does not regard that fact as precluding the entry into force of the Convention as between the Union of Soviet Socialist Republics and Australia.”

“Australia has taken note of the declaration made by the German Democratic Republic on its accession on 13 March 1978 to the Convention, concerning article XI(2) of the Convention. Australia wishes to declare that it cannot accept the German Democratic Republic’s position on sovereign immunity. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. Australia also declares that, while being unable to accept the declaration by the German Democratic Republic, it does not regard that fact as precluding the entry into force of the Convention as between the German Democratic Republic and Australia.”

Belgium

The instrument of ratification of the Kingdom of Belgium was accompanied by a Note Verbale (in the French language) the text of which reads as follows:

[Translation]

“...The Government of the Kingdom of Belgium regrets that it is unable to accept the reservation of the Union of Soviet Socialist Republics, dated 24 June 1975, in respect of article XI, paragraph 2 of the Convention.

The Belgian Government considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes.

Belgian legislation concerning the immunity of State-owned vessels is in accordance with the provisions of the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, done at Brussels on 10 April 1926, to which Belgium is a Party.

The Belgian Government assumes that the reservation of the USSR does not in any way affect the provisions of article 16 of the Maritime Agreement between the Belgian-Luxembourg Economic Union and the Union of Soviet Socialist Republics,

of the Protocol and the Exchange of Letters, signed at Brussels on 17 November 1972. The Belgian Government also assumes that this reservation in no way affects the competence of a Belgian court which, in accordance with article IX of the aforementioned International Convention, is seized of an action for compensation for damage brought against a company registered in the USSR in its capacity of operator of a vessel owned by that State, because the said company, by virtue of article I, paragraph 3 of the same Convention, is considered to be the 'owner of the ship' in the terms of this Convention.

The Belgian Government considers, however, that the Soviet reservation does not impede the entry into force of the Convention as between the Union of Soviet Socialist Republics and the Kingdom of Belgium."

China

At the time of depositing its instrument of accession the Representative of the People's Republic of China declared "that the signature to the Convention by Taiwan authorities is illegal and null and void".

German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following statement and declarations (in the German language):

[Translation]

"In connection with the declaration made by the Government of the Federal Republic of Germany on 20 May 1975 concerning the application of the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 to Berlin (West), it is the understanding of the German Democratic Republic that the provisions of the Convention may be applied to Berlin (West) only inasmuch as this is consistent with the Quadripartite Agreement of 3 September 1971, under which Berlin (West) is no constituent part of the Federal Republic of Germany and must not be governed by it."

"The Government of the German Democratic Republic considers that the provisions of article XI, paragraph 2, of the Convention are inconsistent with the principle of immunity of States."⁽¹⁾

The Government of the German Democratic Republic considers that the provisions of article XIII, paragraph 2, of the Convention are inconsistent with the principle that all States pursuing their policies in accordance with the purposes and principles of the Charter of the United Nations shall have the right to become parties to conventions affecting the interests of all States.

The position of the Government of the German Democratic Republic on article XVII of the Convention, as far as the application of the Convention to colonial and other dependent territories is concerned, is governed by the provisions of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960) proclaiming the necessity of bringing a speedy and unconditional end to colonialism in all its forms and manifestations."

⁽¹⁾ The following Governments do not accept the reservation contained in the instrument of accession of the Government of the German Democratic Republic, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, Norway, Sweden and the United Kingdom.

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by a declaration (in the English language) that “with effect from the day on which the Convention enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)”.

Guatemala

The instrument of acceptance of the Republic of Guatemala contained the following declaration (in the Spanish language):

[Translation]

“It is declared that relations that may arise with Belize by virtue of this accession can in no sense be interpreted as recognition by the State of Guatemala of the independence and sovereignty unilaterally decreed by Belize.”

Italy

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the Italian language):

[Translation]

“The Italian Government wishes to state that it has taken note of the reservation put forward by the Government of the Soviet Union (on the occasion of the deposit of the instrument of accession on 24 June 1975) to article XI(2) of the International Convention on civil liability for oil pollution damage, adopted in Brussels on 29 November 1969.

The Italian Government declares that it cannot accept the aforementioned reservation and, with regard to the matter, observes that, under international law, the States have no right to jurisdictional immunity in cases where vessels of theirs are utilized for commercial purposes.

The Italian Government therefore considers its judicial bodies competent - as foreseen by articles IX and XI(2) of the Convention - in actions for the recovery of losses incurred in cases involving vessels belonging to States employing them for commercial purposes, as indeed in cases where, on the basis of article I(3), it is a company, running vessels on behalf of a State, that is considered the owner of the vessel.

The reservation and its non-acceptance by the Italian Government do not, however, preclude the coming into force of the Convention between the Soviet Union and Italy, and its full implementation, including that of article XI(2).”

Peru ⁽²⁾

The instrument of accession of the Republic of Peru contained the following reservation (in the Spanish language):

[Translation]

“With respect to article II, because it considers that the said Convention will be understood as applicable to pollution damage caused in the sea area under the

⁽²⁾ The depositary received the following communication dated 14 July 1987 from the Embassy of the Federal Republic of Germany in London (in the English language):

“...the Government of the Federal Republic of Germany has the honour to reiterate its well-known position as to the sea area up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast, claimed by Peru to be under the sovereignty and

sovereignty and jurisdiction of the Peruvian State, up to the limit of 200 nautical miles, measured from the base lines of the Peruvian coast”.

Russian Federation

See USSR.

Saint Kitts and Nevis

The instrument of accession of Saint Kitts and Nevis contained the following declaration:

“The Government of Saint Kitts and Nevis considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes”.

Saudi Arabia

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):

[Translation]

“However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol”.

Syrian Arab Republic

The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):

[Translation]

“...this accession [to the Convention] in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention”.

USSR

The instrument of accession of the Union of Soviet Republics contains the following reservation (in the Russian language):

[Translation]

“The Union of Soviet Socialist Republic does not consider itself bound by the provisions of article XI, paragraph 2 of the Convention, as they contradict the principle

jurisdiction of the Peruvian State. In this respect the Federal Government points again to the fact that according to international law no coastal State can claim unrestricted sovereignty and jurisdiction beyond its territorial sea, and that the maximum breadth of the territorial sea according to international law is 12 nautical miles.”

The depositary received the following communication dated 4 November 1987 from the Permanent Mission of the Union of Soviet Socialist Republics to the International Maritime Organization (in the Russian language):

[Translation]

“...the Soviet Side has the honour to confirm its position in accordance with which a coastal State has no right to claim an extension of its sovereignty to sea areas beyond the outer limit of its territorial waters the maximum breadth of which in accordance with international law cannot exceed 12 nautical miles.”

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of the judicial immunity of a foreign State.”⁽³⁾

Furthermore, the instrument of accession contains the following statement (in the Russian language):

[Translation]

“On its accession to the International Convention on Civil Liability for Oil Pollution Damage, 1969, the Union of Soviet Socialist Republics considers it necessary to state that:

“(a) the provisions of article XIII, paragraph 2 of the Convention which deny participation in the Convention to a number of States, are of a discriminatory nature and contradict the generally recognized principle of the sovereign equality of States, and

(b) the provisions of article XVII of the Convention envisaging the possibility of its extension by the Contracting States to the territories for the international relations of which they are responsible are outdated and contradict the United Nations Declaration on Granting Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960)”.

The depositary received on 17 July 1979 from the Embassy of the Union of Soviet Socialist Republics in London a communication stating that:

“...the Soviet side confirms the reservation to paragraph 2 of article XI of the International Convention of 1969 on the Civil Liability for Oil Pollution Damage, made by the Union of Soviet Socialist Republics at adhering to the Convention. This reservation reflects the unchanged and well-known position of the USSR regarding the impermissibility of submitting a State without its express consent to the courts jurisdiction of another State. This principle of the judicial immunity of a foreign State is consistently upheld by the USSR at concluding and applying multilateral international agreements on various matters, including those of merchant shipping and the Law of the sea.

In accordance with article III and other provisions of the 1969 Convention, the liability for the oil pollution damage, established by the Convention is attached to “the owner” of “the ship”, which caused such damage, while paragraph 3 of article I of the Convention stipulates that “in the case of a ship owned by a state and operated by a company which in that state is registered as the ship’s operator, “owner” shall mean such company”. Since in the USSR state ships used for commercial purposes are under the operational management of state organizations who have an independent liability on their obligations, it is only against these organizations and not against the Soviet state that actions for compensation of the oil pollution damage in accordance with the 1969 Convention could be brought. Thus the said reservation does not prevent the consideration in foreign courts in accordance with the jurisdiction established by the Convention, of such suits for the compensation of the damage by the merchant ships owned by the Soviet state”.

⁽³⁾ The following Governments do not accept the reservation contained in the instrument of accession of the Government of the Union of Soviet Socialist Republics, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, the Netherlands, New Zealand, Norway, Sweden, the United Kingdom.

CLC Protocol 1976

**Protocol to the International
Convention on
Civil liability
for oil pollution damage**

(CLC PROT 1976)

Done at London,
19 November 1976
Entered into force: 8 April 1981

**Protocole à la Convention
Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les
hydrocarbures
(CLC PROT 1976)**

Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 8 avril 1981

**Contracting States
as at 2.IX.2003**

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	
Australia (accession)	7.XI.1983	5.II.1984	
Bahamas (acceptance)	3.III.1980	8.IV.1981	
Bahrain (accession)	3.V.1996	1.VIII.1996	
Barbados (accession)	6.V.1994	4.VIII.1994	
Belgium (accession)	15.VI.1989	13.IX.1989	
Belize (accession)	2.IV.1991	1.VII.1991	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	
Cambodia (accession)	8.VI.2001	6.IX.2001	
Cameroon (accession)	14.V.1984	12.VIII.1984	
Canada (accession)	24.I.1989	24.IV.1989	
China⁴ (accession)¹	29.IX.1986	28.XII.1986	22.VIII.2003
Colombia (accession)	26.III.1990	24.VI.1990	
Costa Rica (accession)	8.XII.1997	8.III.1998	
Cyprus (accession)	19.VI.1989	17.IX.1989	
Denmark (accession)	3.VI.1981	1.IX.1981	
Egypt (accession)	3.II.1989	4.V.1989	
El Salvador (accession)	2.I.2002	2.IV.2002	
Finland (accession)	8.I.1981	8.IV.1981	
France (approval)	7.XI.1980	8.IV.1981	
Georgia (accession)	25.VIII.1995	23.XI.1995	
Germany (ratification)²	28.VIII.1980	8.IV.1981	
Greece (accession)	10.V.1989	8.VIII.1989	
Iceland (accession)	24.III.1994	22.VI.1994	
India (accession)	1.V.1987	30.VII.1987	
Ireland (accession)	19.XI.1992	17.II.1993	15.V.1998
Italy (accession)	3.VI.1983	1.IX.1983	
Japan (accession)	24.VIII.1994	22.XI.1994	
Kuwait (accession)	1.VII.1981	29.IX.1981	

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	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Liberia (accession)	17.II.1981	8.IV.1981	
Luxembourg (accession)	14.II.1991	15.V.1991	
Maldives (accession)	14.VI.1981	12.IX.1981	
Malta (accession)	27.IX.1991	26.XII.1991	6.I.2001
Marshall Islands (accession)	24.I.1994	24.IV.1994	
Mauritania (accession)	17.XI.1995	15.II.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	
Mexico (accession)	13.V.1994	11.VIII.1994	
Netherlands (accession)	3.VIII.1982	1.XI.1982	
Nicaragua (accession)	4.VI.1996	2.IX.1996	
Norway (accession)	17.VII.1978	8.IV.1981	
Oman (accession)	24.I.1985	24.IV.1985	
Peru (accession)	24.II.1987	25.V.1987	
Poland (accession)¹	30.X.1985	28.I.1986	
Portugal (accession)	2.I.1986	2.IV.1986	
Qatar (accession)	2.VI.1988	31.VIII.1988	
Republic of Korea (accession)	8.XII.1992	8.III.1993	
Russian Federation³ (accession)¹	2.XII.1988	2.III.1989	
Saudi Arabia (accession)²	15.IV.1993	14.VII.1993	
Singapore (accession)	15.XII.1981	15.III.1982	
Spain (accession)	22.X.1981	20.I.1982	
Sweden (ratification)	7.VII.1978	8.IV.1981	
Switzerland (accession)¹	15.XII.1987	14.III.1988	
United Arab Emirates (accession)	14.III.1984	12.VI.1984	
United Kingdom (ratification)¹	31.I.1980	8.IV.1981	15.V.1998
Vanuatu (accession)	13.I.1989	13.IV.1989	
Venezuela (accession)	21.I.1992	20.IV.1992	
Yemen (accession)	4.VI.1979	8.IV.1981	

Number of Contracting States: 55

¹ With a notification under article V(9)(c) of the Convention, as amended by the Protocol.

² With a declaration.

³ As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

⁴ Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

States which have denounced the Protocol

	Date of receipt of denunciation	Effective date of denunciation
Australia	22.VI.1988	[date of entry into force of 1984 CLC Protocol]
Ireland	15.V.1997	15.V.1998
United Kingdom	12.V.1997	15.V.1998
Malta	6.I.2000	6.I.2001

Declarations, Reservations and Statements

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany contains the following declaration (in the English language):

“...with effect from the date on which the Protocol enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)”.

Saudi Arabia

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):

[Translation]

“However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol”.

Notifications

Article V(9)(c) of the Convention, as amended by the Protocol

China

“...the value of the national currency, in terms of SDR, of the People’s Republic of China is calculated in accordance with the method of valuation applied by the International Monetary Fund.”

Poland

“Poland will now calculate financial liabilities in cases of limitation of the liability of owners of sea-going ships and liability under the International Oil Pollution Compensation Fund in terms of the Special Drawing Right, as defined by the International Monetary Fund.

However, those SDR’s will be converted according to the method instigated by Poland, which is derived from the fact that Poland is not a member of the International Monetary Fund.

The method of conversion is that the Polish National Bank will fix a rate of exchange

CLC Protocol 1976

of the SDR to the Polish zloty through the conversion of the SDR to the United States dollar, according to the current rates of exchange quoted by Reuter. The US dollars will then be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies.

The above method of calculation is in accordance with the provisions of article II paragraph 9 item “a” (in fine) of the Protocol to the International Convention on Civil Liability for Oil Pollution Damage and article II of the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.”

Switzerland*[Translation]*

“The Swiss Federal Council declares, with reference to article V, paragraph 9(a) and (c) of the Convention, introduced by article II of the Protocol of 19 November 1976, that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:

The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette.

USSR

“In accordance with article V, paragraph 9 “c” of the International Convention on Civil Liability for Oil Pollution Damage, 1969 in the wording of article II of the Protocol of 1976 to this Convention it is declared that the value of the unit of “The Special Drawing Right” expressed in Soviet roubles is calculated on the basis of the US dollar rate in effect at the date of the calculation in relation to the unit of “The Special Drawing Right”, determined by the International Monetary Fund, and the US dollar rate in effect at the same date in relation to the Soviet rouble, determined by the State Bank of the USSR”.

United Kingdom

“...in accordance with article V(9)(c) of the Convention, as amended by article II(2) of the Protocol, the manner of calculation employed by the United Kingdom pursuant to article V(9)(a) of the Convention, as amended, shall be the method of valuation applied by the International Monetary Fund.

**Protocol of 1992 to amend the
International Convention on**

**Civil liability for oil
pollution damage, 1969**

(CLC PROT 1992)

Done at London,
27 November 1992
Entry into force: 30 May 1996

**Protocole à la Convention
Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les
hydrocarbures, 1969**

(CLC PROT 1992)

Signé à Londres,
le 27 novembre 1992
Entrée en vigueur: 30 May 1996

	Date of deposit of instrument	Date of entry into force
Algeria (accession)	11.VI.1998	11.VI.1999
Angola (accession)	4.X.2001	4.X.2002
Antigua and Barbuda (accession)	14.VI.2000	14.VI.2001
Argentina (accession)²	13.X.2000	13.X.2001
Australia (accession)	9.X.1995	9.X.1996
Bahamas (accession)	1.IV.1997	1.IV.1998
Bahrain (accession)	3.V.1996	3.V.1997
Barbados (accession)	7.VII.1998	7.VII.1999
Belgium (accession)	6.X.1998	6.X.1999
Belize (accession)	27.XI.1998	27.XI.1999
Brunei Darussalam (accession)	31.I.2002	31.I.2003
Bulgaria (accession)	28.XI.2003	28.XI.2004
Cambodia (accession)	8.VI.2001	8.VI.2002
Cameroon (accession)	15.X.2001	15.X.2002
Canada (accession)	29.V.1998	29.V.1999
Cape Verde (accession)	4.VII.2003	4.VII.2004
Chile (accession)	29.V.2002	29.V.2003
China (accession)¹	5.I.1999	5.I.2000
Colombia (accession)	19.XI.2001	19.XI.2002
Comoros (accession)	5.I.2000	5.I.2001
Congo (accession)	7.VIII.2002	7.VIII.2003
Croatia (accession)	12.I.1998	12.I.1999
Cyprus (accession)	12.V.1997	12.V.1998
Denmark (ratification)	30.V.1995	30.V.1996
Djibouti (accession)	8.I.2001	8.I.2002
Dominica (accession)	31.VIII.2001	31.VIII.2002
Dominican Republic (accession)	24.VI.1999	24.VI.2000
Egypt (accession)	21.IV.1995	30.V.1996
El Salvador (accession)	2.I.2002	2.I.2003
Fiji (accession)	30.XI.1999	30.XI.2000
Finland (acceptance)	24.XI.1995	24.XI.1996
France (approval)	29.IX.1994	30.V.1996
Gabon (accession)	31.V.2002	31.V.2003

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	Date of deposit of instrument	Date of entry into force
Georgia (accession)	18.IV.2000	18.IV.2001
Germany (ratification) ¹	29.IX.1994	30.V.1996
Ghana (accession)	3.II.2003	3.II.2004
Greece (ratification)	9.X.1995	9.X.1996
Grenada (accession)	7.I.1998	7.I.1999
Guinea (accession)	2.X.2002	2.X.2003
Iceland (accession)	13.XI.1998	13.XI.1999
India (accession)	15.XI.1999	15.XI.2000
Indonesia (accession)	6.VII.1999	6.VII.2000
Ireland (accession) ²	15.V.1997	16.V.1998
Israel (accession)	21.X.2004	21.X.2005
Italy (accession)	16.IX.1999	16.IX.2000
Jamaica (accession)	6.VI.1997	6.VI.1998
Japan (accession)	24.VIII.1994	30.V.1996
Kenya (accession)	2.II.2000	2.II.2001
Kuwait (accession)	16.IV.2004	16.IV.2005
Latvia (accession)	9.III.1998	9.III.1999
Liberia (accession)	5.X.1995	5.X.1996
Lithuania (accession)	27.VI.2000	27.VI.2001
Madagascar (accession)	21.V.2002	21.V.2003
Malaysia (accession)	9.VI.2004	9.VI.2005
Malta (accession)	6.I.2000	6.I.2001
Marshall Islands (accession)	16.X.1995	16.X.1996
Mauritius (accession)	6.XII.1999	6.XII.2000
Mexico (accession)	13.V.1994	30.V.1996
Monaco (ratification)	8.XI.1996	8.XI.1997
Morocco (ratification)	22.VIII.2000	22.VIII.2001
Mozambique (accession)	26.IV.2002	26.IV.2003
Namibia (accession)	18.XII.2002	18.XII.2003
Netherlands (accession)	15.XI.1996	15.XI.1997
New Zealand (accession) ²	25.VI.1998	25.VI.1999
Nigeria (accession)	24.V.2002	24.V.2003
Norway (ratification)	3.IV.1995	30.V.1996
Oman (accession)	8.VII.1994	30.V.1996
Panama (accession)	18.III.1999	18.III.2000
Papua New Guinea (accession)	23.I.2001	23.I.2002
Philippines (accession)	7.VII.1997	7.VII.1998
Poland (accession)	21.XII.1999	21.XII.2000
Portugal (accession)	13.XI.2001	13.XI.2002
Qatar (accession)	20.XI.2001	20.XI.2002
Republic of Korea (accession) ²	7.III.1997	16.V.1998
Romania (accession)	27.XI.2000	27.XI.2001
Russian Federation (accession)	20.III.2000	20.III.2001
Samoa (accession)	1.II.2002	1.II.2003
St. Kitts and Nevis (accession)	7.X.2004	7.X.2005
St. Lucia (accession)	20.V.2004	20.V.2005
St. Vincent and the Grenadines (accession)	9.X.2001	9.X.2002
Seychelles (accession)	23.VII.1999	23.VII.2000
Sierra Leone (accession)	4.VI.2001	4.VI.2002

CLC Protocol 1992

	Date of deposit of instrument	Date of entry into force
Singapore (accession)	18.IX.1997	18.IX.1998
Slovenia (accession)	19.VII.2000	19.VII.2001
Solomon Island (accession)	30.VI.2004	30.VI.2005
South Africa (accession)	1.X.2004	1.X.2005
Spain (accession)	6.VII.1995	6.VII.1996
Sri Lanka (accession)	22.I.1999	22.I.2000
Sweden (ratification)	25.V.1995	30.V.1996
Switzerland (accession)	4.VII.1996	4.VII.1997
Tonga (accession)	10.XII.1999	10.XII.2000
Trinidad and Tobago (accession)	6.III.2000	6.III.2001
Tunisia (accession)	29.I.1997	29.I.1998
Turkey (accession)²	17.VIII.2001	17.VIII.2002
Tuvalu (accession)	30.VI.2004	30.VI.2005
United Arab Emirates (accession)	19.XI.1997	19.XI.1998
United Kingdom (accession)³	29.IX.1994	30.V.1996
United Republic of Tanzania (accession)	19.XI.2002	19.XI.2003
Uruguay (accession)	9.VII.1997	9.VII.1998
Vanuatu (accession)	18.II.1999	18.II.2000
Venezuela (accession)	22.VII.1998	22.VII.1999
Viet Nam (accession)	17.VI.2003	17.VI.2004

Number of Contracting States: 94

¹ China declared that the Protocol will also be applicable to the Hong Kong Special Administrative Region.

² With a declaration.

³ The United Kingdom declared its accession to be effective in respect of:

The Bailiwick of Jersey

The Isle of Man

Falkland Islands*

Montserrat

South Georgia and the South Sandwich Islands

Anguilla

Bailiwick of Guernsey

Bermuda

British Antarctic Territory

British Indian Ocean Territory

Pitcairn, Henderson,

Ducie and Oeno Islands

Sovereign Base Areas of

Akrotiri and Dhekelia on Cyprus

Turks & Caicos Islands

Virgin Islands

Cayman Islands

Gibraltar

St Helena and its Dependencies

) with effect from 20.2.98

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* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

*CLC Protocol 1992**Fund 1971*

Declarations, Reservations and Statements

Germany

The instrument of ratification of Germany was accompanied by the following declaration:

“The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992.”

New Zealand

The instrument of accession of New Zealand contained the following declaration:

“And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zealand with the Depositary”.

**International Convention
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 decembre 1971
Entrée en vigueur: 16 octobre 1978

Cessation: 2.XII.2002

Contracting States at time of cessation of Convention

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	
Algeria (ratification)	2.VI.1975	16.X.1978	3.VIII.1999
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	14.VI.2001
Australia (accession)	10.X.1994	8.I.1995	15.V.1998
Bahamas (accession)	22.VII.1976	16.X.1978	15.V.1998
Bahrain (accession)	3.V.1996	1.VIII.1996	15.V.1998

*Fund 1971**Fonds 1971*

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Barbados (accession)	6.V.1994	4.VIII.1994	7.VII.1999
Belgium (ratification)	1.XII.1994	1.III.1995	6.X.1999
Benin (accession)	1.XI.1985	30.I.1986	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	31.I.2003
Cameroon (accession)	14.V.1984	12.VIII.1984	15.X.2002
Canada (accession) ¹	24.I.1989	24.IV.1989	29.V.1999
China ²	—	1.VII.1997	5.I.2000
Colombia (accession)	13.III.1997	11.VI.1997	
Côte d'Ivoire (accession)	5.X.1987	3.I.1988	
Croatia (succession)	—	8.X.1991	30.VII.1999
Cyprus (accession)	26.VII.1989	24.X.1989	15.V.1998
Denmark (accession)	2.IV.1975	16.X.1978	15.V.1998
Djibouti (accession)	1.III.1990	30.V.1990	17.V.2002
Estonia (accession)	1.XII.1992	1.III.1993	
Fiji (accession)	4.III.1983	2.VI.1983	30.XI.2000
Finland (ratification)	10.X.1980	8.I.1981	15.V.1998
France (accession)	11.V.1978	16.X.1978	15.V.1998
Gabon (accession)	21.I.1982	21.IV.1982	
Gambia (accession)	1.XI.1991	30.I.1992	
Germany (ratification) ¹	30.XII.1976	16.X.1978	15.V.1998
Ghana (ratification)	20.IV.1978	16.X.1978	
Greece (accession)	16.XII.1986	16.III.1987	15.V.1998
Guyana (accession)	10.XII.1997	10.III.1998	
Iceland (accession)	17.VII.1980	15.X.1980	10.II.2001
India (accession)	10.VII.1990	8.X.1990	21.VI.2001
Indonesia (accession)	1.IX.1978	30.XI.1978	26.VI.1999
Ireland (ratification)	19.XI.1992	17.II.1993	15.V.1998
Italy (accession)	27.II.1979	28.V.1979	8.X.2000
Japan (ratification)	7.VII.1976	16.X.1978	15.V.1998
Kenya (accession)	15.XII.1992	15.III.1993	7.VII.2001
Kuwait (accession)	2.IV.1981	1.VII.1981	
Liberia (accession)	25.IX.1972	16.X.1978	15.V.1998
Malaysia (accession)	6.I.1995	6.IV.1995	
Maldives (accession)	16.III.1981	14.VI.1981	
Malta (accession)	27.IX.1991	26.XII.1991	6.I.2001
Marshall Islands (accession)	30.XI.1994	28.II.1995	15.V.1998
Mauritania (accession)	17.XI.1995	15.II.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	6.XII.2000
Mexico (accession)	13.V.1994	11.VIII.1994	15.V.1998
Monaco (accession)	23.VIII.1979	21.XI.1979	15.V.1998
Morocco (accession)	31.XII.1992	31.III.1993	25.X.2001
Mozambique (accession)	23.XII.1996	23.III.1997	26.IV.2003
Netherlands (approval)	3.VIII.1982	1.XI.1982	15.V.1998
New Zealand (accession) ³	22.XI.1996	20.II.1997	25.VI.1999
Nigeria (accession)	11.IX.1987	10.XII.1987	

*Fund 1971**Fonds 1971*

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Norway (ratification)	21.III.1975	16.X.1978	15.V.1998
Oman (accession)	10.V.1985	8.VIII.1985	15.V.1998
Panama (accession)	18.III.1999	16.VI.1999	11.V.2000
Papua New Guinea (accession)	12.III.1980	10.VI.1980	23.I.2002
Poland (ratification)	16.IX.1985	15.XII.1985	21.XII.2000
Portugal (ratification)	11.IX.1985	10.XII.1985	
Qatar (accession)	2.VI.1988	31.VIII.1988	20.XI.2002
Republic of Korea (accession)	8.XII.1992	8.III.1993	15.V.1998
Russian Federation (accession)⁴	17.VI.1987	15.IX.1987	20.III.2001
Saint Kitts and Nevis (accession)	14.IX.1994	13.XII.1994	
Seychelles (accession)	12.IV.1988	11.VII.1988	23.VII.2000
Sierra Leone (accession)	13.VIII.1993	11.XI.1993	4.VI.2002
Slovenia (succession)	—	25.VI.1991	19.VII.2001
Spain (accession)	8.X.1981	6.I.1982	15.V.1998
Sri Lanka (accession)	12.IV.1983	11.VII.1983	22.I.2000
Sweden (ratification)	17.III.1975	16.X.1978	15.V.1998
Switzerland (ratification)	4.VII.1996	2.X.1996	15.V.1998
Syrian Arab Republic (accession)¹	6.II.1975	16.X.1978	
Tonga (accession)	1.II.1996	1.V.1996	10.XII.2000
Tunisia (accession)	4.V.1976	16.X.1978	15.V.1998
Tuvalu (succession)	—	16.X.1978	
United Arab Emirates (accession)	15.XII.1983	14.III.1984	24.V.2002
United Kingdom (ratification)	2.IV.1976	16.X.1978	15.V.1998
Vanuatu (accession)	13.I.1989	13.IV.1989	18.II.2000
Venezuela (accession)	21.I.1992	20.IV.1992	22.VII.1999
Yugoslavia (ratification)	16.III.1978	16.X.1978	

Number of Contracting States: 24

Upon the entry into force of the 2000 Protocol to the FUND 1971 Convention, the Convention ceased when the number of Contracting States fell below 25.

¹ With a declaration, reservation or statement.

² Applies only to the Hong Kong Special Administrative Region.

³ Accession by New Zealand was declared not to extend to Tokelau.

⁴ As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

Declarations, Reservations and Statements

Canada

The instrument of accession of Canada was accompanied by the following declaration (in the English and French languages):

“The Government of Canada assumes responsibility for the payment of the obligations contained in articles 10, 11 and 12 of the Fund Convention. Such payments to be made in accordance with section 774 of the Canada Shipping Act as amended by Chapter 7 of the Statutes of Canada 1987”.

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the English language):

“that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.”

Syrian Arab Republic

The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):

[Translation]

“...the accession of the Syrian Arab Republic to this Convention ... in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention.”

Protocol to the International Convention on the Establishment of an International Fund for compensation for oil pollution damage

(FUND PROT 1976)

Done at London, 19 November 1976
Entered into force:
22 November 1994

Protocole à la Convention Internationale portant Creation d'un Fonds International d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS PROT 1976)

Signé a Londres, le 19 novembre 1976
Entré en vigueur:
22 Novembre 1994

Albania (accession)
Australia (accession)
Bahamas (acceptance)
Bahrain (accession)

Date of deposit of instrument	Date of entry into force	Effective date of denunciation
6.IV.1994	22.XI.1994	
10.X.1994	8.I.1995	
3.III.1980	22.XI.1994	
3.V.1996	1.VIII.1996	

*Fund Protocol 1976**Protocole Fonds 1976*

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Barbados (accession)	6.V.1994	22.XI.1994	
Belgium (accession)	1.XII.1994	1.III.1995	
Canada (accession)	21.II.1995	22.V.1995	
China³	—	1.VII.1997	
Colombia (accession)	13.III.1997	11.VI.1997	
Cyprus (accession)	26.VII.1989	22.XI.1994	
Denmark (accession)	3.VI.1981	22.XI.1994	
Finland (accession)	8.I.1981	22.XI.1994	
France (accession)	7.XI.1980	22.XI.1994	
Germany (ratification)¹	28.VIII.1980	22.XI.1994	
Greece (accession)	9.X.1995	7.I.1996	
Iceland (accession)	24.III.1994	22.XI.1994	
India (accession)	10.VII.1990	22.XI.1994	
Ireland (accession)	19.XI.1992	22.XI.1994	15.V.1998
Italy (accession)	21.IX.1983	22.XI.1994	
Japan (accession)	24.VIII.1994	22.XI.1994	
Liberia (accession)	17.II.1981	22.XI.1994	
Malta (accession)	27.IX.1991	22.XI.1994	6.I.2001
Marshall Islands (accession)	16.X.1995	14.I.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	
Mexico (accession)	13.V.1994	22.XI.1994	
Morocco (accession)	31.XII.1992	22.XI.1994	
Netherlands (accession)	1.XI.1982	22.XI.1994	
Norway (accession)	17.VII.1978	22.XI.1994	
Poland (accession)¹	30.X.1985	22.XI.1994	
Portugal (accession)	11.IX.1985	22.XI.1994	
Russian Federation² (accession)	30.I.1989	22.XI.1994	
Spain (accession)	5.IV.1982	22.XI.1994	
Sweden (ratification)	7.VII.1978	22.XI.1994	
United Kingdom (ratification)	31.I.1980	22.XI.1994	15.V.1998
Vanuatu (accession)	13.I.1989	22.XI.1994	
Venezuela (accession)	21.I.1992	22.XI.1994	

Number of Contracting States: 33

¹ With a declaration or statement.² As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.³ Applies only to the Hong Kong Special Administrative Region.**States which have denounced the Protocol**

	Date of receipt of denunciation	Effective date of denunciation
Ireland	15.V.1997	15.V.1998
United Kingdom	9.V.1997	15.V.1998
Malta	6.I.2000	6.I.2001

Declarations, Reservations and Statements

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany contains the following declaration in the English language:

“... with effect from the date on which the Protocol enters into force for the Federal Republic of Germany, it shall also apply to Berlin (West).”

Poland

(for text of the notification, see page 458)

**Protocol of 1992 to amend
the International
Convention on the
Establishment of an
International
Fund for compensation
for oil pollution damage**

(FUND PROT 1992)*

Done at London,
27 November 1992
Entry into force: 30 May 1996

**Protocole de 1992 modifiant
la Convention Internationale
de 1971 portant
Creation d'un Fonds
International
d'indemnisation pour les
dommages dus à la pollution
par les hydrocarbures**

(FONDS PROT 1992)

Signé a Londres,
le 27 novembre 1992
Entrée en vigueur: 30 may 1996

	Date of deposit of instrument	Date of entry into force
Algeria (accession)	11.VI.1998	11.VI.1999
Angola (accession)	4.X.2001	4.X.2002
Antigua and Barbuda (accession)	14.VI.2000	14.VI.2001
Argentina (accession)¹	13.X.2000	13.X.2001
Australia (accession)	9.X.1995	9.X.1996
Bahamas (accession)	1.IV.1997	1.IV.1998
Bahrain (accession)	3.V.1996	3.V.1997
Barbados (accession)	7.VII.1998	7.VII.1999
Belgium (accession)	6.X.1998	6.X.1999
Belize (accession)	27.XI.1998	27.XI.1999
Brunei Darussalam (accession)	31.I.2002	31.I.2003
Cambodia (accession)	8.VI.2001	8.VI.2002

* The 1971 Fund Convention ceased to be in force on 24 May 2002 and therefore the Convention does not apply to incidents occurring after that date.

*Fund Protocol 1992**Protocole Fonds 1992*

	Date of deposit of instrument	Date of entry into force
Cameroon (accession)	15.X.2001	15.X.2002
Canada (accession) ¹	29.V.1998	29.V.1999
Cape Verde (accession)	4.VII.2003	4.VII.2004
China (accession) ²	5.I.1999	5.I.2000
Colombia (accession)	19.XI.2001	19.XI.2002
Comoros (accession)	5.I.2000	5.I.2001
Congo (accession)	7.VIII.2002	7.VIII.2003
Croatia (accession)	12.I.1998	12.I.1999
Cyprus (accession)	12.V.1997	12.V.1998
Denmark (ratification)	30.V.1995	30.V.1996
Djibouti (accession)	8.I.2001	8.I.2002
Dominica (accession)	31.VIII.2001	31.VIII.2002
Dominican Republic (accession)	24.VI.1999	24.VI.2000
Estonia (accession)	6.VIII.2004	6.VIII.2005
Fiji (accession)	30.XI.1999	30.XI.2000
Finland (acceptance)	24.XI.1995	24.XI.1996
France (approval)	29.IX.1994	30.V.1996
Gabon (accession)	31.V.2002	31.V.2003
Georgia (accession)	18.IV.2000	18.IV.2001
Germany (ratification) ¹	29.IX.1994	30.V.1996
Ghana (accession)	3.II.2003	3.II.2004
Greece (ratification)	9.X.1995	9.X.1996
Grenada (accession)	7.I.1998	7.I.1999
Guinea (accession)	2.X.2002	2.X.2003
Iceland (accession)	13.XI.1998	13.XI.1999
India (accession)	21.VI.2000	21.VI.2001
Ireland (accession) ¹	15.V.1997	16.V.1998
Israel (accession)	21.X.2004	21.X.2005
Italy (accession)	16.IX.1999	16.IX.2000
Jamaica (accession)	24.VI.1997	24.VI.1998
Japan (accession)	24.VIII.1994	30.V.1996
Kenya (accession)	2.II.2000	2.II.2001
Latvia (accession)	6.IV.1998	6.IV.1999
Liberia (accession)	5.X.1995	5.X.1996
Lithuania (accession)	27.VI.2000	27.VI.2001
Madagascar (accession)	21.V.2002	21.V.2003
Malaysia (accession)	9.VI.2004	9.VI.2005
Malta (accession)	6.I.2000	6.I.2001
Marshall Islands (accession)	16.X.1995	16.X.1996
Mauritius (accession)	6.XII.1999	6.XII.2000
Mexico (accession)	13.V.1994	30.V.1996
Monaco (ratification)	8.XI.1996	8.XI.1997
Morocco (ratification)	22.VIII.2000	22.VIII.2001
Mozambique (accession)	26.IV.2002	26.IV.2003
Namibia (accession)	18.XII.2002	18.XII.2003
Netherlands (accession)	15.XI.1996	15.XI.1997
New Zealand (accession) ¹	25.VI.1998	25.VI.1999
Nigeria (accession)	24.V.2002	24.V.2003
Norway (ratification)	3.IV.1995	30.V.1996

	Date of deposit of instrument	Date of entry into force
Oman (accession)	8.VII.1994	30.V.1996
Panama (accession)	18.III.1999	18.III.2000
Papua New Guinea (accession)	23.I.2001	23.I.2002
Philippines (accession)	7.VII.1997	7.VII.1998
Poland (accession)	21.XII.1999	21.XII.2000
Portugal (accession)	13.XI.2001	13.XI.2002
Qatar (accession)	20.XI.2001	20.XI.2002
Republic of Korea (accession)¹	7.III.1997	16.V.1998
Russian Federation (accession)	20.III.2000	20.III.2001
St. Lucia (accession)	20.V.2004	20.V.2005
Saint Vincent and the Grenadines (accession)	1.II.2002	1.II.2003
Samoa (accession)	9.X.2001	9.X.2002
Seychelles (accession)	23.VII.1999	23.VII.2000
Sierra Leone (accession)	4.VI.2001	4.VI.2002
Singapore (accession)	31.XII.1997	31.XII.1998
Slovenia (accession)	19.VII.2000	19.VII.2001
South Africa (accession)	1.X.2004	1.X.2005
Spain (accession)¹	6.VII.1995	16.V.1998
Sri Lanka (accession)	22.I.1999	22.I.2000
Sweden (ratification)	25.V.1995	30.V.1996
Tonga (accession)	10.XII.1999	10.XII.2000
Trinidad and Tobago (accession)	6.III.2000	6.III.2001
Tunisia (accession)	29.I.1997	29.I.1998
Turkey (accession)¹	17.VIII.2001	17.VIII.2002
Tuvalu (accession)	30.VI.2004	30.VI.2005
United Arab Emirates (accession)	19.XI.1997	19.XI.1998
United Kingdom (accession)³	29.IX.1994	30.V.1996
United Republic of Tanzania (accession)	19.XI.2002	19.XI.2003
Uruguay (accession)	9.VII.1997	9.VII.1998
Vanuatu (accession)	18.II.1999	18.II.2000
Venezuela (accession)	22.VII.1998	22.VII.1999

Number of Contracting States 86

¹ With a declaration.

² China declared that the Protocol will be applicable only to the Hong Kong Special Administrative Region.

³ The United Kingdom declared its accession to be effective in respect of:

The Bailiwick of Jersey
The Isle of Man
Falkland Islands*
Montserrat
South Georgia and the South Sandwich Islands
Anguilla)
Bailiwick of Guernsey)
Bermuda)
British Antarctic Territory)

*Fund Protocol 1992**Protocole Fonds 1992*

British Indian Ocean Territory)	with effect from 20.2.98
Pitcairn, Henderson,		
Ducie and Oeno Islands)	
Sovereign Base Areas of Akrotiri and		
Dhekelia on Cyprus)	
Turks & Caicos Islands)	
Virgin Islands)	
Cayman Islands)	
Gibraltar)	with effect from 15.5.98
St Helena and its Dependencies)	

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

Declarations, Reservations and Statements

Canada

The instrument of accession of Canada was accompanied by the following declaration:
 “By virtue of Article 14 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, the Government of Canada assumes responsibility for the payment of the obligations contained in Article 10, paragraph 1.”

Federal Republic of Germany

The instrument of ratification by Germany was accompanied by the following declaration:
 “The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992.”

New Zealand

The instrument of accession of New Zealand contained the following declaration:
 “And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zealand with the Depositary”.

Spain

The instrument of accession by Spain contained the following declaration:

[Translation]

“In accordance with the provisions of article 30, paragraph 4 of the above mentioned Protocol, Spain declares that the deposit of its instrument of accession shall not take effect for the purpose of this article until the end of the six-month period stipulated in article 31 of the said Protocol”.

NUCLEAR 1971

**Convention relating to Civil
Liability in the Field of****Maritime Carriage
of nuclear material
(NUCLEAR 1971)**

Done at Brussels,
17 December 1971
Entered into force: 15 July 1975

**Convention relative 9 la
Responsabilité Civile dans
le Domaine du
Transport Maritime
de matières nucléaires
(NUCLEAR 1971)**

Signée a Bruxelles,
le 17 décembre 1971
Entrée en vigueur: 15 juillet 1975

Argentina	(a)	18.V.1981
Belgium	(r)	15.VI.1989
Bulgaria	(a)	3.XII.2004
Denmark ⁽¹⁾	(r)	4.IX.1974
Dominica	(a)	31.VIII.2001
Finland	(A)	6.VI.1991
France	(r)	2.II.1973
Gabon	(a)	21.I.1982
Germany*	(r)	1.X.1975
Italy*	(r)	21.VII.1980
Latvia	(a)	25.I.2002
Liberia	(a)	17.II.1981
Netherlands	(a)	1.VIII.1991
Norway	(r)	16.IV.1975
Spain	(a)	21.V.1974
Sweden	(r)	22.XI.1974
Yemen	(a)	6.III.1979

Declarations, Reservations and Statements**Federal Republic of Germany**

The following reservation accompanies the signature of the Convention by the Representative of the Federal Republic of Germany (in the English language):

“Pursuant to article 10 of the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, the Federal Republic of Germany reserves the right to provide by national law, that the persons liable under an international convention or national law applicable in the field of maritime transport may continue to be liable in addition to the operator of a nuclear installation on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator.” This reservation was withdrawn at the time of deposit of the instrument of ratification of the Convention.

The instrument of ratification of the Government of the Federal Republic of Germany was accompanied by the following declaration (in the German language):

[*Translation*]

“That the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.

⁽¹⁾ Shall not apply to the Faroe Islands.

NUCLEAR 1971

PAL 1974

Italy

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the English language):

"It is understood that the ratification of the said Convention will not be interpreted in such a way as to deprive the Italian State of any right of recourse made according to the international law for the damages caused to the State itself or its citizens by a nuclear accident".

**Athens Convention relating
to the Carriage
of passengers
and their luggage by sea
(PAL 1974)**

Done at Athens:
13 December 1974
Entered into force:
28 April 1987

**Convention d'Athènes
relative au Transport
par mer de passagers
et de leurs bagages
(PAL 1974)**

Signée à Athènes,
le 13 décembre 1974
Entrée en vigueur:
28 avril 1987

	Date of deposit of instrument	Date of entry into force
Argentina (accession)¹	26.V.1983	28.IV.1987
Bahamas (accession)	7.VI.1983	28.IV.1987
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (accession)	15.VI.1989	13.IX.1989
China⁵ (accession)	1.VI.1994	30.VIII.1994
Croatia (accession)	12.I.1998	12.IV.1998
Dominica (accession)	31.VIII.2001	29.XI.2001
Egypt (accession)	18.X.1991	16.I.1992
Equatorial Guinea (accession)	24.IV.1996	23.VII.1996
Estonia (accession)	8.X.2002	6.I.2003
Georgia (accession)	25.VIII.1995	23.XI.1995
Greece (acceptance)	3.VII.1991	1.X.1991
Guyana (accession)	10.XII.1997	10.III.1998
Ireland (accession)	24.II.1998	25.V.1998
Jordan (accession)	3.X.1995	1.I.1996
Latvia (accession)	6.XII.2001	6.III.2002
Liberia (accession)	17.II.1981	28.IV.1987
Luxembourg (accession)	14.II.1991	15.V.1991
Malawi (accession)	9.III.1993	7.VI.1993

PAL 1974

	Date of deposit of instrument	Date of entry into force
Marshall Islands (accession)	29.XI.1994	27.II.1995
Nigeria (accession)	24.II.2004	24.V.2004
Poland (ratification)	28.I.1987	28.IV.1987
Russian Federation² (accession)¹	27.IV.1983	28.IV.1987
Spain (accession)	8.X.1981	28.IV.1987
Switzerland (ratification)	15.XII.1987	14.III.1988
Tonga (accession)	15.II.1977	28.IV.1987
Ukraine (accession)	11.XI.1994	9.II.1995
United Kingdom (ratification)³	31.I.1980	28.IV.1987
Vanuatu (accession)	13.I.1989	13.IV.1989
Yemen (accession)	6.III.1979	28.IV.1987

Number of Contracting States: 29⁴

¹ With a declaration or reservation.

² As from 26.XII.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

⁴ On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded to the Convention on 29.VIII.1979.

⁵ Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Argentina⁽¹⁾

The instrument of accession of the Argentine Republic contained a declaration of non-application of the Convention under article 22, paragraph 1, as follows (in the Spanish language):

[Translation]

“The Argentine Republic will not apply the Convention when both the passengers and the carrier are Argentine nationals”.

The instrument also contained the following reservations:

[Translation]

“The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and Their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of “Falkland Islands”, and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory”.

German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):

[Translation]

“The German Democratic Republic declares that the provisions of this Convention shall have no effect when the passenger is a national of the German Democratic Republic and when the performing carrier is a permanent resident of the German Democratic Republic or has its seat there”.

USSR

The instrument of accession of the Union of Soviet Socialist Republic contained a declaration of non-application of the Convention under article 22, paragraph 1.

⁽¹⁾ A communication dated 19 October 1983 from the Government of the United Kingdom, the full text of which was circulated by the depositary, includes the following:

“The Government of the United Kingdom of Great Britain and Northern Ireland reject each and every of these statements and assertions. The United Kingdom has no doubt as to its sovereignty over the Falkland Islands and thus its right to include them within the scope of application of international agreements of which it is a party. The United Kingdom cannot accept that the Government of the Argentine Republic has any rights in this regard. Nor can the United Kingdom accept that the Falkland Islands are incorrectly designated”.

PAL Protocol 1976

**Protocol to the
Athens Convention relating
to the Carriage
of passengers
and their luggage by sea
(PAL PROT 1976)**

Done at London,
19 November 1976
Entered into force: 30 April 1989

**Protocole à la
Convention d'Athènes
relative au Transport
par mer de passagers
et de leurs bagages
(PAL PROT 1976)**

Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 30 avril 1989

	Date of deposit of instrument	Date of entry into force
Argentina (accession)¹	28.IV.1987	30.IV.1989
Bahamas (accession)	28.IV.1987	30.IV.1989
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (accession)	15.VI.1989	13.IX.1989
China⁵ (accession)	1.VI.1994	30.VIII.1994
Croatia (accession)	12.I.1998	12.IV.1998
Dominica (accession)	31.VIII.2001	29.XI.2001
Estonia (accession)	8.X.2002	6.I.2003
Georgia (accession)	25.VIII.1995	23.XI.1995
Greece (accession)	3.VII.1991	1.X.1991
Ireland (accession)	24.II.1998	25.V.1998
Latvia (accession)	6.XII.2001	6.III.2002
Liberia (accession)	28.IV.1987	30.IV.1989
Luxembourg (accession)	14.II.1991	15.V.1991
Marshall Islands (accession)	29.XI.1994	27.II.1995
Poland (accession)	28.IV.1987	30.IV.1989
Russian Federation² (accession)³	30.I.1989	30.IV.1989
Spain (accession)	28.IV.1987	30.IV.1989
Switzerland (accession)³	15.XII.1987	30.IV.1989
Tonga (accession)	18.IX.2003	17.XII.2003
Ukraine (accession)	11.XI.1994	9.II.1995
United Kingdom (ratification)^{3, 4}	28.IV.1987	30.IV.1989
Vanuatu (accession)	13.I.1989	30.IV.1989
Yemen (accession)	28.IV.1987	30.IV.1989

Number of Contracting States: 24

¹ With a reservation.

² As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

³ With a notification under article II(3).

PAL Protocol 1976

- ⁴ 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
- ⁵ Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

* With a reservation made by the Argentine Republic and a communication received from the United Kingdom.

** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Argentina ⁽¹⁾

The instrument of accession of the Argentine Republic contained the following reservation (in the Spanish language):

[Translation]

“The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of “Falkland Islands”, and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory”.

⁽¹⁾ The depositary received the following communication dated 4 August 1987 from the United Kingdom Foreign and Commonwealth Office:

“The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the reservation made by the Argentine Republic as regards the Falkland Islands.

The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and, accordingly, their right to extend the application of the Convention to the Falkland Islands”.

*PAL Protocol 1990**Convention d'Athènes, 1974*

**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

Croatia (accession)
Egypt (accession)
Spain (accession)
Tonga (accession)

Date of deposit of instrument

12.I.1998
18.X.1991
24.II.1993
18.IX.2003

Number of Contracting States: 4

**Protocol of 2002
to the Athens Convention
relating to the carriage
of passengers
and their luggage by sea, 1974**

Done at London, 1 November 2002
Not yet in force

**Protocole de 2002
à la Convention d'Athènes
relative au Transport
par mer de passagers
et de leurs bagages, 1974**

Fait à Londres, le 1 Novembre 2002
Pas encore en vigueur

Status as 8 January 2005

Signatories

Spain	(subject to ratification)	14.I.2004
Norway	(subject to ratification)	31.III.2004
United Kingdom	(subject to ratification)	27.IV.2004
Finland	(subject to acceptance)	28.IV.2004
Germany	(subject to ratification)	29.IV.2004
Sweden	(subject to ratification)	30.IV.2004

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

	Date of deposit of instrument	Date of entry into force
Albania (accession)	7.VI.2004	1.X.2004
Azerbaijan (accession)	16.VII.2004	1.XI.2004
Australia (accession)	20.II.1991	1.VI.1991
Bahamas (accession)	7.VI.1983	1.XII.1986
Barbados (accession)	6.V.1994	1.IX.1994
Belgium (accession) ^{1,2}	15.VI.1989	1.X.1989
Benin (accession)	1.XI.1985	1.XII.1986
China ⁹	—	1.VII.1997
Congo (accession)	7.IX.2004	3.II.2004
Croatia (accession)	2.III.1993	1.VI.1993
Denmark (ratification)	30.V.1984	1.XII.1986
Dominica (accession)	31.VIII.2001	1.XII.2001
Egypt (accession)	30.III.1988	1.VII.1988
Equatorial Guinea (accession)	24.IV.1996	1.VIII.1996
Estonia (accession)	23.X.2002	1.II.2003
Finland (ratification)	8.V.1984	1.XII.1986
France (approval) ^{1,2}	1.VII.1981	1.XII.1986
Georgia (accession)	20.II.1996	1.VI.1996
Germany ³ (ratification) ^{1,2}	12.V.1987	1.IX.1987
Greece (accession)	3.VII.1991	1.XI.1991
Guyana (accession)	10.XII.1997	1.IV.1998
India (accession)	20.VIII.2002	1.XII.2002
Ireland (accession) ¹	24.II.1998	1.VI.1998
Japan (accession) ¹	4.VI.1982	1.XII.1986
Latvia (accession)	13.VII.1999	1.XI.1999
Liberia (accession)	17.II.1981	1.XII.1986
Lithuania (accession)	3.III.2004	1.VII.2004
Marshall Islands (accession)	29.XI.1994	1.III.1995
Mauritius (accession)	17.XII.2002	1.VI.2003
Mexico (accession)	13.V.1994	1.IX.1994
Netherlands (accession) ^{1,2}	15.V.1990	1.IX.1990
New Zealand (accession) ⁵	14.II.1994	1.VI.1994
Nigeria (accession)	24.II.2004	1.VI.2004
Norway (ratification) ⁴	30.III.1984	1.XII.1986
Poland (accession) ⁶	28.IV.1986	1.XII.1986
Samoa (accession)	18.V.2004	1.IX.2004
Sierra Leone (accession)	26.VII.2001	1.XI.2001
Spain (ratification)	13.XI.1981	1.XII.1986
St. Lucia (accession)	20.V.2004	1.IX.2004

LLMC 1976

	Date of deposit of instrument	Date of entry into force
Sweden (ratification)⁴	30.III.1984	1.XII.1986
Switzerland (accession)^{2, 6}	15.XII.1987	1.IV.1988
Tonga (accession)	18.IX.2003	1.I.2004
Trinidad and Tobago (accession)	6.III.2000	1.VII.2000
Turkey (accession)	6.III.1998	1.VII.1998
United Arab Emirates (accession)	19.XI.1997	1.III.1998
United Kingdom (ratification)^{1, 7, 8}	31.I.1980	1.XII.1986
Vanuatu (accession)	14.IX.1992	1.I.1993
Yemen (accession)	6.III.1979	1.XII.1986

Number of Contracting States: 41

The Convention applies provisionally in respect of: Belize

¹ With a declaration, reservation or statement.

² With a notification under article 15(2).

³ On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded^{1, 6} to the Convention on 17.II.1989.

⁴ With a notification under article 15(4).

⁵ The instrument of accession contained the following statement:

“AND WHEREAS it is not intended that the accession by the Government of New Zealand to the Convention should extend to Tokelau;”.

⁶ With a notification under article 8(4).

⁷ The United Kingdom declared its ratification to be effective also in respect of:

Bailiwick of Jersey
Bailiwick of Guernsey

Isle of Man

Belize*

Bermuda

British Virgin Islands

Cayman Islands

Falkland Islands**

Gibraltar

Hong Kong***

Montserrat

Pitcairn

Saint Helena and Dependencies

Turks and Caicos Islands

United Kingdom Sovereign Base Areas of

Akrotiri and Dhekelia in the Island of Cyprus

Anguilla

British Antarctic Territory

British Indian Ocean Territory

South Georgia and the South Sandwich Islands

)
) notification received
) 4.II.1999

⁸ With notifications under articles 8(4) and 15(2).

⁹ Applies only to the Hong Kong Special Administrative Region.

* Has since become the independent State of Belize to which the Convention applies provisionally.

** A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

*** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Belgium

The instrument of accession of the Kingdom of Belgium was accompanied by the following reservation (in the French language):

[Translation]

“In accordance with the provisions of article 18, paragraph 1, Belgium expresses a reservation on article 2, paragraph 1(d) and (e)”.

China

By notification dated 5 June 1997 from the People's Republic of China:

[Translation]

“1. with respect to the Hong Kong Special Administrative Region, it reserves the right in accordance with Article 18 (1), to exclude the application of the Article 2 (1)(d)”.

France

The instrument of approval of the French Republic contained the following reservation (in the French language):

[Translation]

“In accordance with article 18, paragraph 1, the Government of the French Republic reserves the right to exclude the application of article 2, paragraphs 1(d) and (e)”.

German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):

[Translation]

Article 2, paragraph 1(d) and (e)

“The German Democratic Republic notes that for the purpose of this Convention there is no limitation of liability within its territorial sea and internal waters in respect of the removal of a wrecked ship, the raising, removal or destruction of a ship which is sunk, stranded or abandoned (including anything that is or has been on board such ship). Claims, including liability, derive from the laws and regulations of the German Democratic Republic.”

Article 8, paragraph 1

“The German Democratic Republic accepts the use of the Special Drawing Rights merely as a technical unit of account. This does not imply any change in its position toward the International Monetary Fund”.

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the German language):

[Translation]

“...that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany”.

“In accordance with art. 18, par. 1 of the Convention, the Federal Republic of Germany reserves the right to exclude the application of art. 2, par. 1(d) and (e) of the Convention”

Japan

The instrument of accession of Japan was accompanied by the following statement (in the English language):

“...the Government of Japan, in accordance with the provision of paragraph 1 of article 18 of the Convention, reserves the right to exclude the application of paragraph 1(d) and (e) of article 2 of the Convention”.

Netherlands

The instrument of accession of the Kingdom of the Netherlands contained the following reservation:

“In accordance with article 18, paragraph 1 of the Convention on limitation of liability for maritime claims, 1976, done at London on 19 November 1976, the Kingdom of the Netherlands reserves the right to exclude the application of article 2, paragraph 1(d) and (e) of the Convention”.

United Kingdom

The instrument of accession of the United Kingdom of Great Britain and Northern Ireland contained reservation which states that the United Kingdom was “Reserving the right, in accordance with article 18, paragraph 1, of the Convention, on its own behalf and on behalf of the above mentioned territories, to exclude the application of article 2, paragraph 1(d); and to exclude the application of article 2, paragraph 1(e) with regard to Gibraltar only”.

Notifications

Article 8(4)**German Democratic Republic**

[Translation]

“The amounts expressed in Special Drawing Rights will be converted into marks of the German Democratic Republic at the exchange rate fixed by the Staatsbank of the German Democratic Republic on the basis of the current rate of the US dollar or of any other freely convertible currency”.

China

[Translation]

“The manner of calculation employed with respect to article 8(1) of the Convention concerning the unit of account shall be the method of valuation applied by the International Monetary Fund;”

Poland

“Poland will now calculate financial liabilities mentioned in the Convention in the terms of the Special Drawing Right, according to the following method.

The Polish National Bank will fix a rate of exchange of the SDR to the United States dollar according to the current rates of exchange quoted by Reuter. Next, the US dollar will be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies”.

Switzerland

“The Federal Council declares, with reference to article 8, paragraphs 1 and 4 of the Convention that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:

The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette”.

United Kingdom

“...The manner of calculation employed by the United Kingdom pursuant to article

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8(1) of the Convention shall be the method of valuation applied by the International Monetary Fund”.

Article 15(2)**Belgium***[Translation]*

“In accordance with the provisions of article 15, paragraph 2, Belgium will apply the provisions of the Convention to inland navigation”.

France*[Translation]*

“...- that no limit of liability is provided for vessels navigating on French internal waterways;

- that, as far as ships with a tonnage of less than 300 tons are concerned, the general limits of liability are equal to half those established in article 6 of the Convention...for ships with a tonnage not exceeding 500 tons”.

Federal Republic of Germany*[Translation]*

“In accordance with art. 15, par. 2, first sentence, sub-par. (a) of the Convention, the system of limitation of liability to be applied to vessels which are, according to the law of the Federal Republic of Germany, ships intended for navigation on inland waterways, is regulated by the provisions relating to the private law aspects of inland navigation.

In accordance with art. 15, par. 2, first sentence, sub-par. (b) of the Convention, the system of limitation of liability to be applied to ships up to a tonnage of 250 tons is regulated by specific provisions of the law of the Federal Republic of Germany to the effect that, with respect to such a ship, the limit of liability to be calculated in accordance with art. 6, par. 1 (b) of the Convention is half of the limitation amount to be applied with respect to a ship with a tonnage of 500 tons”.

Netherlands*Paragraph 2(a)*

“The Act of June 14th 1989 (Staatsblad 239) relating to the limitation of liability of owners of inland navigation vessels provides that the limits of liability shall be calculated in accordance with an Order in Council.

The Order in Council of February 19th 1990 (Staatsblad 96) adopts the following limits of liability in respect of ships intended for navigation on inland waterways.

I. Limits of liability for claims in respect of loss of life or personal injury other than those in respect of passengers of a ship, arising on any distinct occasion:

1. for a ship not intended for the carriage of cargo, in particular a passenger ship, 200 Units of Account per cubic metre of displacement at maximum permitted draught, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;

2. for a ship intended for the carriage of cargo, 200 Units of Account per ton of the ship's maximum deadweight, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;

3. for a tug or a pusher, 700 Units of Account for each kW of the motorpower of the means of propulsion;

4. for a pusher which at the time the damage was caused was coupled to barges in a pushed convoy, the amount calculated in accordance with 3 shall be increased by 100 Units of Account per ton of the maximum deadweight of the pushed barges; such increase shall not apply if it is proved that the pusher has rendered salvage services to one or more of such barges;

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5. for a ship equipped with mechanical means of propulsion which at the time the damage was caused was moving other ships coupled to this ship, the amount calculated in accordance with 1, 2 or 3 shall be increased by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other ships; such increase shall not apply if it is proved that this ship has rendered salvage services to one or more of the coupled ships;

6. for hydrofoils, dredgers, floating cranes, elevators and all other floating appliances, pontoons or plant of a similar nature, treated as inland navigation ships in accordance with Article 951a, paragraph 4 of the Commercial Code, their value at the time of the incident;

7. where in cases mentioned under 4 and 5 the limitation fund of the pusher or the mechanically propelled ships is increased by 100 Units of Account per ton of maximum deadweight of the pushed barges or per cubic metre of displacement of the other coupled ships, the limitation fund of each barge or of each of the other coupled ships shall be reduced by 100 Units of Account per ton of the maximum deadweight of the barge or by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other vessel with respect to claims arising out of the same incident; however, in no case shall the limitation amount be less than 200,000 Units of Account.

II. The limits of liability for claims in respect of any damage caused by water pollution, other than claims for loss of life or personal injury, are equal to the limits mentioned under I.

III. The limits of liability for all other claims are equal to half the amount of the limits mentioned under I.

IV. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of an inland navigation ship, the limit of liability of the owner thereof shall be an amount equal to 60,000 Units of Account multiplied by the number of passengers the ship is authorized to carry according to its legally established capacity or, in the event that the maximum number of passengers the ship is authorized to carry has not been established by law, an amount equal to 60,000 Units of Account multiplied by the number of passengers actually carried on board at the time of the incident. However, the limitation of liability shall in no case be less than 720,000 Units of Account and shall not exceed the following amounts:

- (i) 3 million Units of Account for a vessel with an authorized maximum capacity of 100 passengers;
- (ii) 6 million Units of Account for a vessel with an authorized maximum capacity of 180 passengers;
- (iii) 12 million Units of Account for a vessel with an authorized maximum capacity of more than 180 passengers;

Claims for loss of life or personal injury to passengers have been defined in the same way as in Article 7, paragraph 2 of the Convention on Limitation of Liability for Maritime Claims, 1976.

The Unit of Account mentioned under I-IV is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976."

Paragraph 2(b)

The Act of June 14th 1989 (Staatsblad 241) relating to the limitation of liability for maritime claims provides that with respect to ships which are according to their construction intended exclusively or mainly for the carriage of persons and have a tonnage of less than 300, the limit of liability for claims other than for loss of life or personal injury may be established by Order in Council at a lower level than under the Convention.

The Order in Council of February 19th 1990 (Staatsblad 97) provides that the limit shall be 100,000 Units of Account.

The Unit of Account is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976."

LLMC 1976

Switzerland*[Translation]*

"In accordance with article 15, paragraph 2, of the Convention on Limitation of Liability for Maritime Claims, 1976, we have the honour to inform you that Switzerland has availed itself of the option provided in paragraph 2(a) of the above mentioned article.

Since the entry into force of article 44a of the Maritime Navigation Order of 20 November 1956, the limitation of the liability of the owner of an inland waterways ship has been determined in Switzerland in accordance with the provisions of that article, a copy of which is [reproduced below]:

II. Limitation of liability of the owner of an inland waterways vessel**Article 44a**

1. In compliance with article 5, subparagraph 3c, of the law on maritime navigation, the liability of the owner of an inland waterways vessel, provided in article 126, subparagraph 2c, of the law, shall be limited as follows:

a. in respect of claims for loss of life or personal injury, to an amount of 200 units of account per deadweight tonne of a vessel used for the carriage of goods and per cubic metre of water displaced for any other vessel, increased by 700 units of account per kilowatt of power in the case of mechanical means of propulsion, and to an amount of 700 units of account per kilowatt of power for uncoupled tugs and pusher craft; for all such vessels, however, the limit of liability is fixed at a minimum of 200,000 units of account;

b. in respect of claims for passengers, to the amounts provided by the Convention on Limitation of Liability for Maritime Claims, 1976, to which article 49, subparagraph 1, of the federal law on maritime navigation refers;

c. in respect of any other claims, half of the amounts provided under subparagraph a.

2. The unit of account shall be the special drawing right defined by the International Monetary Fund.

3. Where, at the time when damage was caused, a pusher craft was securely coupled to a pushed barge train, or where a vessel with mechanical means of propulsion was providing propulsion for other vessels coupled to it, the maximum amount of the liability, for the entire coupled train, shall be determined on the basis of the amount of the liability of the pusher craft or of the vessel with mechanical means of propulsion and also on the basis of the amount calculated for the deadweight tonnage or the water displacement of the vessels to which such pusher craft or vessel is coupled, in so far as it is not proved that such pusher craft or such vessel has rendered salvage services to the coupled vessels."

United Kingdom

"...With regard to article 15, paragraph 2(b), the limits of liability which the United Kingdom intend to apply to ships of under 300 tons are 166,677 units of account in respect of claims for loss of life or personal injury, and 83,333 units of account in respect of any other claims."

Article 15(4)**Norway**

"Because a higher liability is established for Norwegian drilling vessels according to the Act of 27 May 1983 (No. 30) on changes in the Maritime Act of 20 July 1893, paragraph 324, such drilling vessels are exempted from the regulations of this Convention as specified in article 15 No. 4."

Sweden

"...In accordance with paragraph 4 of article 15 of the Convention, Sweden has established under its national legislation a higher limit of liability for ships constructed for or adapted to and engaged in drilling than that otherwise provided for in article 6 of the Convention.

**Protocol of 1996 to amend
the convention on
Limitation of Liability
for maritime claims, 1976**

(LLMC PROT 1996)

Done at London, 2 May 1996
Entry into force: 13 May 2004

**Protocole de 1996 modifiant
la convention de 1976 sur la
Limitation de la
Responsabilité en matière
de créances maritimes**

(LLMC PROT 1996)

Signée à Londres le 2 mai 1996
Entrée en vigueur: 13 mai 2004

	Date of deposit of instrument	Date of entry into force
Albania (accession)	7.VI.2004	5.IX.2004
Australia (accession)	8.X.2002	13.V.2004
Denmark (ratification)	12.IV.2002	13.V.2004
Finland (acceptance)	15.IX.2000	13.V.2004
Germany (ratification)	3.IX.2001	13.V.2004
Malta (accession) ¹	13.II.2004	13.V.2004
Norway (ratification) ¹	17.X.2000	13.V.2004
Russian Federation (accession) ¹	25.V.1999	13.V.2004
Sierra Leone (accession)		1.XI.2001
St. Lucia (accession)	20.V.2004	18.VIII.2004
Samoa (accession)	18.V.2004	16.VIII.2004
Sweden (accession)	22.VII.2004	20.X.2004
Tonga (accession)	18.IX.2003	13.V.2004
United Kingdom (ratification) ¹	11.VI.1999	13.V.2004

Number of Contracting States: 9

¹ With a reservation or statement

**International Convention on
Salvage, 1989
(SALVAGE 1989)**

Done at London: 28 April 1989
Entered into force: 14 July 1996

**Convention Internationale de
1989 sur l'Assistance
(ASSISTANCE 1989)**

Signée à Londres le 28 avril 1989
Entrée en vigueur: 14 juillet 1996

	Date of deposit of instrument	Date of entry into force
Australia (accession) ¹	8.I.1997	8.I.1998
Belgium (accession)	30.VI.2004	30.VI.2005
Canada (ratification) ¹	14.XI.1994	14.VII.1996
China ⁴ (accession) ¹	30.III.1994	14.VII.1996
Congo (accession)	7.IX.2004	7.IX.2005
Croatia (accession) ¹	10.IX.1998	10.IX.1999

*Salvage 1989**Assistance 1989*

	Date of deposit of instrument	Date of entry into force
Denmark (ratification)	30.V.1995	14.VII.1996
Dominica (accession)	31.VIII.2001	31.VIII.2002
Egypt (accession)	14.III.1991	14.VII.1996
Estonia (accession)¹	31.VII.2001	31.VII.2002
France (accession)	20.XII.2001	20.XII.2002
Georgia (accession)	25.VIII.1995	25.VIII.1996
Germany (ratification)¹	8.X.2001	8.X.2002
Greece (accession)	3.VI.1996	3.VI.1997
Guinea (accession)	2.X.2002	2.X.2003
Guyana (accession)	10.XII.1997	10.XII.1998
Iceland (accession)	21.III.2002	21.III.2003
India (accession)	18.X.1995	18.X.1996
Iran (Islamic Republic of) (accession)¹	1.VIII.1994	14.VII.1996
Ireland (ratification)¹	6.I.1995	14.VII.1996
Italy (ratification)	14.VII.1995	14.VII.1996
Jordan (accession)	3.X.1995	3.X.1996
Kenya (accession)	21.VII.1999	21.VII.2000
Latvia (accession)	17.III.1999	17.III.2000
Lithuania (accession)¹	15.XI.1999	15.XI.2000
Marshall Islands (accession)	16.X.1995	16.X.1996
Mauritius (accession)	17.XII.2002	17.XII.2003
Mexico (ratification)¹	10.X.1991	14.VII.1996
Netherlands (acceptance)^{1, 2}	10.XII.1997	10.XII.1998
New Zealand (accession)	16.X.2002	16.X.2003
Nigeria (ratification)	11.X.1990	14.VII.1996
Norway (ratification)¹	3.XII.1996	3.XII.1997
Oman (accession)	14.X.1991	14.VII.1996
Romania (accession)	18.V.2001	18.V.2002
Russian Federation (ratification)¹	25.V.1999	25.V.2000
Saudi Arabia (accession)¹	16.XII.1991	14.VII.1996
Sierra Leone (accession)	26.VII.2001	26.VII.2002
St. Kitts and Nevis (accession)	7.X.2004	7.X.2005
Sweden (ratification)¹	19.XII.1995	19.XII.1996
Switzerland (ratification)	12.III.1993	14.VII.1996
Syrian Arab Republic (accession)¹	19.III.2002	19.III.2003
Tonga (accession)	18.IX.2003	18.IX.2004
Tunisia (accession)¹	5.V.1999	5.V.2000
United Arab Emirates (accession)	4.X.1993	14.VII.1996
United Kingdom (ratification)^{1, 3}	29.IX.1994	14.VII.1996
United States (ratification)	27.III.1992	14.VII.1996
Vanuatu (accession)	18.II.1999	18.II.2000

Number of Contracting States: 44

¹ With a reservation or statement² With a notification³ The United Kingdom declared its ratification to be effective in respect of:
The Bailiwick of Jersey

The Isle of Man	
Falkland Islands*	
Montserrat	
South Georgia and the South Sandwich Islands	
Hong Kong** as from 30.V.1997	
Anguilla)
British Antarctic Territory)
British Indian Ocean Territory)
Cayman Islands)
Pitcairn, Henderson, Ducie and Oeno Islands) with effect from 22.7.98
St Helena and its Dependencies)
Turks and Caicos Islands)
Virgin Islands)
⁴ Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.	

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Canada

The instrument of ratification of Canada was accompanied by the following reservation:

"Pursuant to Article 30 of the International Convention on Salvage, 1989, the Government of Canada reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

China

The instrument of accession of the People's Republic of China contained the following statement:

[Translation]

"That in accordance with the provisions of article 30, paragraph 1 of the International Convention on Salvage, 1989, the Government of the People's Republic of China reserves the right not to apply the provisions of article 30, paragraphs 1(a), (b) and (d) of the said Convention".

Islamic Republic of Iran

The instrument of accession of the Islamic Republic of Iran contained the following reservation:

"The Government of the Islamic Republic of Iran reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b), (c) and (d)".

Ireland

The instrument of ratification of Ireland contained the following reservation:

"Reserve the right of Ireland not to apply the provisions of the Convention specified in article 30(1)(a) and (b) thereof".

*Salvage 1989**Assistance 1989***Mexico**

The instrument of ratification of Mexico contained the following reservation and declaration:

[Translation]

“The Government of Mexico reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b) (c) and (d), pointing out at the same time that it considers salvage as a voluntary act “.

Norway

The instrument of ratification of the Kingdom of Norway contained the following reservation:

“In accordance with Article 30, subparagraph 1(d) of the Convention, the Kingdom of Norway reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

Saudi Arabia ⁽¹⁾

The instrument of accession of Saudi Arabia contained the following reservations:

[Translation]

- “1. This instrument of accession does not in any way whatsoever mean the recognition of Israel; and
2. The Kingdom of Saudi Arabia reserves its right not to implement the rules of this instrument of accession to the situations indicated in paragraphs (a), (b), (c) and (d) of article 30 of this instrument.”

Spain

The following reservations were made at the time of signature of the Convention:

[Translation]

“In accordance with the provisions of article 30.1(a), 30.1(b) and 30.1(d) of the International Convention on Salvage, 1989, the Kingdom of Spain reserves the right not to apply the provisions of the said Convention:

- when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;
- when the salvage operations take place in inland waters and no vessel is involved.

For the sole purposes of these reservations, the Kingdom of Spain understands by ‘inland waters’ not the waters envisaged and regulated under the name of ‘internal waters’ in the United Nations Convention on the Law of the Sea but continental waters that are not in communication with the waters of the sea and are not used by seagoing vessels. In particular, the waters of ports, rivers, estuaries, etc., which are frequented by seagoing vessels are not considered as ‘inland waters’:

- when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

⁽¹⁾ The depositary received the following communication dated 27 February 1992 from the Embassy of Israel:

“The Government of the State of Israel has noted that the instrument of accession of Saudi Arabia to the above-mentioned Convention contains a declaration with respect to Israel.

In the view of the Government of the State of Israel such declaration, which is explicitly of a political character, is incompatible with the purposes and objectives of this Convention and cannot in any way affect whatever obligations are binding upon Saudi Arabia under general International Law or under particular Conventions.

The Government of the State of Israel will, in so far as concerns the substance of the matter, adopt towards Saudi Arabia an attitude of complete reciprocity.”

Sweden

The instrument of ratification of the Kingdom of Sweden contained the following reservation:

“Referring to Article 30.1(d) Sweden reserves the right not to apply the provisions of the Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

United Kingdom

The instrument of ratification of the United Kingdom of Great Britain and Northern Ireland contained the following reservation:

“In accordance with the provisions of article 30, paragraph 1(a), (b) and (d) of the Convention, the United Kingdom reserves the right not to apply the provisions of the Convention when:

- (i) the salvage operation takes place in inland waters and all vessels involved are of inland navigation; or
- (ii) the salvage operation takes place in inland waters and no vessel is involved; or .
- (iii) the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

**International Convention on
Oil pollution preparedness,
response and co-operation
1990**

Done at London: 30 November 1990
Entered into force 13 May 1995.

**Convention Internationale de
1990 sur la Preparation, la
lutte et la cooperation en
matière de pollution par les
hydrocarbures**

Signée a Londres le 30 novembre 1990
Entrée en vigueur: 13 Mai 1995.

	Date of deposit of instrument	Date of entry into force
Angola (accession)	4.X.2001	4.I.2002
Antigua and Barbuda (accession)	5.I.1999	5.IV.1999
Argentina (ratification) ¹	13.VII.1994	13.V.1995
Australia (accession)	6.VII.1992	13.V.1995
Azerbaijan (accession)	16.VII.2004	16.X.2004
Bahamas (accession)	4.X.2001	4.I.2002
Bangladesh (accession)	23.VII.2004	23.X.2004
Brazil (ratification)	21.VII.1998	21.X.1998
Bulgaria (accession)	5.IV.2001	5.VII.2001
Canada (accession)	7.III.1994	13.V.1995
Cape Verde (accession)	4.VII.2003	4.X.2003
Chile (accession)	15.X.1997	15.I.1998
China (accession)	30.III.1998	30.VI.1998

¹ With a reservation.

Oil pollution preparedness 1990

	Date of deposit of instrument	Date of entry into force
Comoros (accession)	5.I.2000	5.IV.2000
Congo (accession)	7.IX.2004	7.XII.2004
Croatia (accession)	12.I.1998	12.IV.1998
Denmark (ratification)	22.X.1996	22.I.1997
Djibouti (accession)	19.I.1998	19.IV.1998
Dominica (accession)	31.VIII.2001	30.XI.2001
Ecuador (ratification)	29.I.2002	29.IV.2002
Egypt (ratification)	29.VI.1992	13.V.1995
El Salvador (accession)	9.X.1995	9.I.1996
Finland (approval)	21.VII.1993	13.V.1995
France (approval)	6.XI.1992	13.V.1995
Georgia (accession)	20.II.1996	20.V.1996
Germany (ratification)	15.II.1995	15.V.1995
Greece (ratification)	7.III.1995	7.VI.1995
Guinea (accession)	2.X.2002	2.I.2003
Guyana (accession)	10.XII.1997	10.III.1998
Iceland (ratification)	21.VI.1993	13.V.1995
India (accession)	17.XI.1997	17.II.1998
Iran (Islamic Republic of)(accession)	25.II.1998	25.V.1998
Ireland (accession)	26.IV.2001	26.VII.2001
Israel (ratification)	24.III.1999	24.VI.1999
Italy (ratification)	2.III.1999	2.VI.1999
Jamaica (accession)	8.IX.2000	8.XII.2000
Japan (accession)	17.X.1995	17.I.1996
Jordan (accession)	14.IV.2004	14.VII.2004
Kenya (accession)	21.VII.1999	21.X.1999
Latvia (accession)	30.XI.2001	28.II.2002
Liberia (accession)	5.X.1995	5.I.1996
Libyan Arab Jamahiriya (accession)	18.VI.2004	18.IX.2004
Lithuania (accession)	23.XII.2002	23.III.2003
Madagascar (accession)	21.V.2002	21.VIII.2002
Malaysia (accession)	30.VII.1997	30.X.1997
Malta (accession)	21.I.2003	21.IV.2003
Marshall Islands (accession)	16.X.1995	16.I.1996
Mauritania (accession)	22.XI.1999	22.II.2000
Mauritius (accession)	2.XII.1999	2.III.2000
Mexico (accession)	13.V.1994	13.V.1995
Monaco (accession)	19.X.1999	19.I.2000
Morocco (ratification)	29.IV.2003	29.VII.2003
Netherlands (ratification)	1.XII.1994	13.V.1995
New Zealand (accession)	2.VII.1999	2.X.1999
Nigeria (accession)	25.V.1993	13.V.1995
Norway (ratification)	8.III.1994	13.V.1995
Pakistan (accession)	21.VII.1993	13.V.1995
Peru (accession)	24.IV.2002	24.VII.2002
Poland (ratification)	12.VI.2003	12.IX.2003
Republic of Korea (accession)	9.XI.1999	9.II.2000
Romania (accession)	17.XI.2000	17.II.2001
Samoa (accession)	18.V.2004	18.VIII.2004

Oil pollution preparedness 1990

	Date of deposit of instrument	Date of entry into force
	24.III.1994	13.V.1995
Seychelles (accession)	26.VI.1992	13.V.1995
Singapore (accession)	10.III.1999	10.VI.1999
Slovenia (accession)	31.V.2001	31.VIII.2001
St. Kitts and Nevis (accession)	7.X.2004	7.I.2004
St. Lucia (accession)	20.V.2004	20.VIII.2004
Spain (ratification)	12.I.1994	13.V.1995
Sweden (ratification)	30.III.1992	13.V.1995
Switzerland (accession)	4.VII.1996	4.X.1996
Syrian Arab Republic (accession)	14.III.2003	14.VI.2003
Thailand (accession)	20.IV.2000	20.VII.2000
Tonga (accession)	1.II.1996	1.V.1996
Trinidad and Tobago (accession)	6.III.2000	6.VI.2000
Tunisia (accession)	23.X.1995	23.I.1996
Turkey (accession)	1.VII.2004	1.X.2004
United Kingdom (accession)	16.IX.1997	16.XII.1997
United States (ratification)	27.III.1992	13.V.1995
Uruguay (signature by confirmation)	27.IX.1994	13.V.1995
Vanuatu (accession)	18.II.1999	18.V.1999
Venezuela (ratification)	12.XII.1994	13.V.1995

Number of Contracting States: 73

Declarations, Reservations and Statements

Argentina⁽¹⁾

The instrument of ratification of the Argentine Republic contained the following reservation:

[Translation]

“The Argentine Republic hereby expressly reserves its rights of sovereignty and of territorial and maritime jurisdiction over the Malvinas Islands, South Georgia and South Sandwich Islands, and the maritime areas corresponding thereto, as recognized and defined in Law No. 23.968 of the Argentine Nation of 14 August 1991, and

⁽¹⁾ The depositary received, on 22 February 1996, the following communication from the Foreign and Commonwealth Office of the United Kingdom:

“The Government of the United Kingdom of Great Britain and Northern Ireland have noted the declaration of the Government of Argentina concerning rights of sovereignty and of territorial and maritime jurisdiction over the Falkland Islands and South Georgia and the South Sandwich Islands.

The British Government have no doubt about the sovereignty of the United Kingdom over the Falkland Islands, as well as South Georgia and the South Sandwich Islands. The British Government can only reject as unfounded the claims by the Government of Argentina.”

repudiates any extension of the scope of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, which may be made by any other State, community or entity to those Argentine island territories and/or maritime areas”.

Denmark

The instrument of ratification of the Kingdom of Denmark contained the following reservation:

[Translation]

“That the Convention will not apply to the Faroe Islands nor to Greenland, pending a further decision”.

By a communication dated 27 November 1996 the depositary was informed that Denmark withdraws the reservation with respect to the territory of Greenland.

**International Convention on
Liability and Compensation
for damage in connection
with the carriage of hazardous
and noxious substances by
sea, 1996**

(HNS 1996)

Done at London, 3 May 1996
Not yet in force.

**Convention Internationale de 1996
sur la responsabilité
et l'indemnisation pour les
dommages liés au transport
par mer de substances nocives
et potentiellement dangereuses**

(HNS 1996)

Signée a Londres le 3 mai 1996
Pas encore en vigueur.

Angola (accession)
Morocco (accession)
Russian Federation (accession)¹
Samoa (accession)
St. Kitts and Nevis (accession)
Slovenia (accession)
Tonga (accession)

4.X.2001
19.III.2003
20.III.2000
18.V.2004
7.X.2004
21.VII.2004
18.IX.2003

¹ With a reservation.

**STATUS OF THE RATIFICATIONS OF
AND ACCESSIONS TO UNITED NATIONS
AND UNITED NATIONS/IMO CONVENTIONS
IN THE FIELD OF PUBLIC AND
PRIVATE MARITIME LAW**

**ETAT DES RATIFICATIONS ET ADHESIONS
AUX CONVENTIONS DES NATIONS UNIES ET
AUX CONVENTIONS DES NATIONS UNIES/OMI
EN MATIERE DE DROIT MARITIME PUBLIC
ET DE DROIT MARITIME PRIVE**

r	=	ratification
a	=	accession
A	=	acceptance
AA	=	approval
S	=	definitive signature

Notes de l'editeur / Editor's notes:

- Les dates mentionnées sont les dates du dépôt des instruments.
- The dates mentioned are the dates of the deposit of instruments.

**United Nations Convention on a
Code of Conduct
for liner conferences**

Geneva, 6 April 1974

Entered into force: 6 October 1983

**Convention des Nations Unies sur
un
Code de Conduite
des conférences maritimes**

Genève, 6 avril 1974

Entrée en vigueur: 6 octobre 1983

Algeria	(r)	12.XII.1986
Bangladesh	(a)	24.VII.1975
Barbados	(a)	29.X.1980
Belgium	(r)	30.IX.1987
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 ⁽¹⁾	(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
Guatemala	(r)	3.III.1976
Guinea	(a)	19.VIII.1980
Guyana	(a)	7.I.1980
Honduras	(a)	12.VI.1979
India	(r)	14.II.1978
Indonesia	(r)	11.I.1977
Iraq	(a)	25.X.1978

⁽¹⁾ Applied to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

*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, Republic of	(a)	II.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
Qatar	(a)	31.X.1994
Romania	(a)	7.I.1982
Russian Federation	(A)	28.VI.1979
Saudi Arabia	(a)	24.V.1985
Serbia and Montenegro	(d)	12.III.2001
Senegal	(r)	20.V.1977
Sierra Leone	(a)	9.VII.1979
Slovakia	(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.III.1983
Tunisia	(a)	15.III.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
Zambia	(a)	8.IV.1988

**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
Burundi	(a)	4.IX.1998
Cameroon	(a)	21.IX.1993
Chile	(r)	9.VII.1982
Czech Republic ⁽¹⁾	(r)	23.VI.1995
Egypt	(r)	23.IV.1979
Gambia	(r)	7.II.1996
Georgia	(a)	21.III.1996
Guinea	(r)	23.I.1991
Hungary	(r)	5.VII.1984
Jordan	(a)	10.V.2001
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
Saint Vincent and the Grenadines	(a)	12.IX.2000
Senegal	(r)	17.III.1986
Sierra Leone	(r)	7.X.1988
Syrian Arab Republic	(a)	16.X.2002
Tanzania, United Republic of	(a)	24.VII.1979
Tunisia	(a)	15.IX.1980
Uganda	(a)	6.VII.1979
Zambia	(a)	7.X.1991

⁽¹⁾ The Convention was signed on 6 march 1979 by the former Czechoslovakia. Respectively on 28 May 1993 and on 2 Jun 1993 the Slovak Republic and the Czech Republic deposited instruments of succession. The Czech Republic then deposited instrument of ratification on 23 Jun 1995.

*Multimodal transport 1980**UNCLOS 1982*

**United Nations Convention
on the
International multimodal
transport of goods**

Geneva, 24 May 1980
Not yet in force.

Burundi
Chile
Georgia
Lebanon
Malawi
Mexico
Morocco
Rwanda
Senegal
Zambia

**Convention des Nations Unies
sur le
Transport multimodal
international de
marchandises**

Genève 24 mai 1980
Pas encore en vigueur.

(a) 4.IX.1998
(r) 7.IV.1982
(a) 21.III.1996
(a) 1.VI.2001
(a) 2.II.1984
(r) 11.II.1982
(r) 21.I.1993
(a) 15.IX.1987
(r) 25.X.1984
(a) 7.X.1991

**United Nations Convention
on the Law of the Sea
(UNCLOS 1982)**

Montego Bay 10 December 1982
Entered into force:
16 November 1994

**Convention des Nations Unies
sur les Droit de la Mer**

Montego Bay 10 decembre 1982
Entrée en vigueur:
16 Novembre 1994

Albania
Algeria
Angola
Antigua and Barbuda
Argentina
Armenia
Australia
Austria
Bahamas
Bahrain
Bangladesh
Barbados
Belgium
Belize
Benin
Bolivia
Bosnia and Herzegovina
Botswana
Brazil
Brunei Darussalam

23.VI.2003
11.VI.1996
5.XII.1990
2.II.1989
1.XII.1995
9.XII.2002
5.X.1994
14.VII.1995
29.VII.1983
30.V.1985
27.VII.2001
12.X.1993
13.XI.1998
13.VIII.1983
16.X.1997
28.IV.1995
12.I.1994
2.V.1990
22.XII.1988
5.XI.1996

UNCLOS 1982

Bulgaria	15.V.1996
Cameroon	19.XI.1985
Canada	7.XI.2003
Cape Verde	10.VIII.1987
Chile	25.VIII.1997
China	7.VI.1996
Comoros	21.VI.1994
Congo, Democratic Republic of	17.II.1989
Cook Islands	15.II.1995
Costa Rica	21.IX.1992
Côte d'Ivoire	28.VII.1995
Croatia	5.IV.1995
Cuba	15.VIII.1984
Cyprus	12.XII.1988
Czech Republic	21.VI.1996
Denmark	16.XI.2004
Djibouti	8.X.1991
Dominica	24.X.1991
Egypt	26.VIII.1983
Equatorial Guinea	21.VII.1997
European Community	1.IV.1998
Fiji	10.XII.1982
Finland	21.VI.1996
France	11.IV.1996
Gabon	11.III.1988
Gambia	22.V.1984
Georgia	21.III.1996
Germany	14.X.1994
Ghana	7.VI.1983
Greece	21.VII.1995
Grenada	25.IV.1991
Guatemala	11.II.1997
Guinea	6.IX.1985
Guinea-Bissau	25.VIII.1986
Guyana	16.XI.1993
Haiti	31.VII.1996
Honduras	5.X.1993
Hungary	5.II.2002
Iceland	21.VI.1985
India	29.VI.1995
Indonesia	3.II.1986
Iraq	30.VII.1985
Ireland	21.VI.1996
Italy	13.I.1995
Jamaica	21.III.1983
Japan	20.VI.1996
Jordan	27.XI.1995
Kenya	2.III.1989
Kiribati	24.II.2003
Korea, Republic of	29.I.1996

UNCLOS 1982

Kuwait	2.V.1986
Lao People's Democratic Republic	5.VI.1998
Latvia	23.XII.2004
Lebanon	5.I.1995
Lituania	12.XI.2003
Luxembourg	5.X.2000
Madagascar	22.VIII.2002
Malaysia	14.X.1996
Maldives	7.IX.2000
Mali	16.VII.1985
Malta	20.V.1993
Marshall Islands	9.VIII.1991
Mauritania	17.VII.1996
Mauritius	4.XI.1994
Mexico	18.III.1983
Micronesia, Federated States of	29.IV.1991
Monaco	20.III.1996
Mongolia	13.VIII.1996
Mozambique	13.III.1997
Myanmar	21.V.1996
Namibia, United Nations Council for	18.IV.1983
Nauru	23.I.1996
Nepal	2.XI.1998
Netherlands	28.VI.1996
New Zealand	19.VII.1996
Nicaragua	3.V.2000
Nigeria	14.VIII.1986
Norway	24.VI.1996
Oman	17.VIII.1989
Pakistan	26.II.1997
Palau	30.IX.1996
Panama	1.VII.1996
Papua New Guinea	14.I.1997
Paraguay	26.IX.1986
Philippines	8.V.1984
Poland	13.XI.1998
Portugal	3.XI.1997
Qatar	7.XII.2002
Romania	17.XII.1996
Russian Federation	12.III.1997
Samoa	14.VIII.1995
St. Kitts and Nevis	7.I.1993
St. Lucia	27. III.1985
St. Vincent and the Grenadines	1. X.1993
Sao Tomé and Principe	3.XI.1987
Saudi Arabia	24.IV.1996
Senegal	25.X.1984
Serbia and Montenegro	12.III.2001
Seychelles	16.IX.1991
Sierra Leone	12.XII.1994

*UNCLOS 1982**Registration of ships 1986*

Singapore	17.XI.1994
Slovakia	8.V.1996
Slovenia	16.VI.1995
Solomon Islands	23.VI.1997
Somalia	24.VII.1989
South Africa	23.XII.1997
Spain	15.I.1997
Sri Lanka	19.VII.1994
Sudan	23.I.1985
Suriname	9.VII.1998
Sweden	25.VI.1996
Tanzania, United Republic of	30.IX.1985
The Former Yugoslav Republic of Macedonia	19.VIII.1994
Togo	16.IV.1985
Tonga	2.VIII.1995
Trinidad and Tobago	25.IV.1986
Tunisia	24.IV.1985
Tuvalu	8.XII.2002
Uganda	9.XI.1990
Ukraine	26.VII.1999
United Kingdom	25.VII.1997
Uruguay	10.XII.1992
Vanautu	10.VIII.1999
Viet Nam	25.VII.1994
Yemen, Democratic Republic of	21.VII.1987
Zambia	7.III.1983
Zimbabwe	24.II.1993

**United Nations Convention
on Conditions for
Registration of ships**

Geneva, 7 February 1986
Not yet in force.

**Convention des Nations
Unies sur les Conditions d'
Immatriculation des navires**

Genève, 7 février 1986
Pas encore entrée en vigueur.

Bulgaria	(a)	27.XII.1996
Egypt	(r)	9.I.1992
Georgia	(a)	7.VIII.1995
Ghana	(a)	29.VIII.1990
Haiti	(a)	17.V.1989
Hungary	(a)	23.I.1989
Iraq	(a)	1.II.1989
Ivory Coast	(r)	28.X.1987
Libyan Arab Jamahiriya	(r)	28.II.1989
Mexico	(r)	21.I.1988
Oman	(a)	18.X.1990
Syrian Arab Republic	(a)	29.IX.2004

*Liability of operators 1991**Arrest of Ships, 1999***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.

Georgia
Egypt

Convention des Nations Unies sur la Responsabilité des exploitants de terminaux transport dans le commerce international

Signée à Vienne 19 avril 1991
Pas encore entrée en vigueur.

(a) 21.III.1996
(a) 6.IV.1999

International Convention on Maritime liens and mortgages, 1993

Done at Geneva,
6 May 1993
Entry into force: 5 September 2004

Ecuador
Estonia
Monaco
Nigeria
Russian Federation
Saint Vincent and the Grenadines
Spain
Syrian Arab Republic
Tunisia
Ukraine
Vanuatu

Convention Internationale de 1993 su les Privilèges et hypothèques maritimes

Signée à Genève
le 6 mai 1993
Entrée en vigueur: 5 septembre 2004

(a) 16.III.2004
(a) 7.II.2003
(a) 28.III.1995
(a) 5.III.2004
(a) 4.III.1999
(a) 11.III.1997
(a) 7.VI.2002
(a) 8.X.2003
(r) 2.II.1995
(a) 27.II.2003
(a) 10.VIII.1999

International Convention on Arrest of Ships, 1999

Done at Geneva,
12 March 1999
Not yet in force.

Albania
Algeria
Bulgaria
Estonia
Latvia
Spain
Syrian Arab Republic

Convention Internationale de 1999 sur la saisie conservatoire des navires

Fait à Genève
le 12 Mars 1999
Pas encore en vigueur.

(a) 4.X.2004
(a) 7.V.2004
(r) 27.VII.2000
(a) 11.V.2001
(a) 7.XII.2001
(a) 7.VI.2002
(a) 16.X.2002

**STATUS OF THE RATIFICATIONS OF
AND ACCESSIONS TO UNIDROIT CONVENTIONS
IN THE FIELD OF PRIVATE MARITIME LAW**

**ETAT DES RATIFICATIONS ET ADHESIONS
AUX CONVENTIONS D'UNIDROIT EN MATIERE
DE DROIT MARITIME PRIVE**

**Unidroit Convention on
International financial
leasing 1988**

Done at Ottawa 28 May 1988
Entered into force.
1 May 1995

**Convention de Unidroit sur
le Creditbail international
1988**

Signée à Ottawa 28 mai 1988
Entré en vigueur:
1 Mai 1995

Belarus	(a)	18.VIII.1998
France	(r)	23.IX.1991
Hungary	(a)	7.V.1996
Italy	(r)	29.XI.1993
Latvia	(a)	6.VIII.1997
Nigeria	(r)	25.X.1994
Panama	(r)	26.III.1997
Russian Federation	(a)	3.VI.1998
Uzbekistan, Republic of	(a)	6.VII.2000

CONFERENCES

OF THE COMITE MARITIME INTERNATIONAL

I. BRUSSELS - 1897

President: Mr. Auguste BEERNAERT.

Subjects: Organization of the International Maritime Committee - Collision - Shipowners' Liability.

II. ANTWERP - 1898

President: Mr. Auguste BEERNAERT.

Subjects: Liability of Owners of sea-going vessels.

III. LONDON - 1899

President: Sir Walter PHILLIMORE.

Subjects: Collisions in which both ships are to blame - Shipowners' liability.

IV. PARIS - 1900

President: Mr. LYON-CAEN.

Subjects: Assistance, salvage and duty to tender assistance - Jurisdiction in collision matters.

V. HAMBURG - 1902

President: Dr. Friedrich SIEVEKING.

Subjects: International Code on Collision and Salvage at Sea - Jurisdiction in collision matters - Conflict of laws as to owner-ship of vessels.

VI. AMSTERDAM - 1904

President: Mr. E.N. RAHUSEN.

Subjects: Conflicts of law in the matter of Mortgages and Liens on ships. - Jurisdiction in collision matters - Limitation of Shipowners' Liability.

VII. LIVERPOOL - 1905

President: Sir William R. KENNEDY.

Subjects: Limitation of Shipowners' Liability - Conflict of Laws as to Maritime Mortgages and Liens - Brussels Diplomatic Conference.

VIII. VENICE - 1907

President: Mr. Alberto 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.

Conferences of the Comité Maritime International

XI. COPENHAGEN - 1913

President: Dr. J.H. KOCH.*Subjects:* London declaration 1909 - Safety of Navigation - International Code of Affreightment - Insurance of enemy property.

XII. ANTWERP - 1921

President: Mr. Louis FRANCK.*Subjects:* International Conventions relating to Collision and Salvage at sea. - Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Code of Affreightment - Exonerating clauses.

XIII. LONDON - 1922

President: Sir Henry DUKE.*Subjects:* Immunity of State-owned ships - Maritime Mortgage and Liens. - Exonerating clauses in Bills of lading.

XIV. GOTHENBURG - 1923

President: Mr. Efiel LÖFGREN.*Subjects:* Compulsory insurance of passengers - Immunity of State owned ships - International Code of Affreightment - International Convention on Bills of Lading.

XV. GENOA - 1925

President: Dr. Francesco BERLINGIERI.*Subjects:* Compulsory Insurance of passengers - Immunity of State owned ships - International Code of Affreightment - Maritime Mortgages and Liens.

XVI. AMSTERDAM - 1927

President: Mr. B.C.J. LODER.*Subjects:* Compulsory insurance of passengers - Letters of indemnity - Ratification of the Brussels Conventions.

XVII. ANTWERP - 1930

President: Mr. Louis FRANCK.*Subjects:* Ratification of the Brussels Conventions - Compulsory insurance of passengers - Jurisdiction and penal sanctions in matters of collision at sea.

XVIII. OSLO - 1933

President: Mr. Edvin ALTEN.*Subjects:* Ratification of the Brussels Conventions - Civil and penal jurisdiction in matters of collision on the high seas - Provisional arrest of ships - Limitation of Shipowners' Liability.

XIX. PARIS - 1937

President: Mr. Georges RIPERT.*Subjects:* Ratification of the Brussels Conventions - Civil and penal jurisdiction in the event of collision at sea - Arrest of ships - Commentary on the Brussels Conventions - Assistance and Salvage of and by Aircraft at sea.

XX. ANTWERP - 1947

President: Mr. Albert LILAR.*Subjects:* Ratification of the Brussels Conventions, more especially of the Convention on 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.

Conferences of the Comité Maritime International

XXI. AMSTERDAM - 1948

President: Prof. J. OFFERHAUS*Subjects:* Ratification of the Brussels International Convention - Revision of the York-Antwerp Rules 1924 - Limitation of Shipowners' Liability (Gold Clauses) - Combined Through Bills of Lading - Revision of the draft Convention on arrest of ships - Draft of creation of an International Court for Navigation by Sea and by Air.

XXII. NAPLES - 1951

President: Mr. Amedeo GIANNINI.*Subjects:* Brussels International Conventions - Draft convention relating to Provisional Arrest of Ships - Limitation of the liability of the Owners of Sea-going Vessels and Bills of Lading (Revision of the Gold clauses) - Revision of the Conventions of Maritime Hypothèques and Mortgages - Liability of Carriers by Sea towards Passengers - Penal Jurisdiction in matters of collision at Sea.

XXIII. MADRID - 1955

President: Mr. Albert LILAR.*Subjects:* Limitation of Shipowners' Liability - Liability of Sea Carriers towards passengers - Stowaways - Marginal clauses and letters of indemnity.

XXIV. RIJEKA - 1959

President: Mr. Albert LILAR*Subjects:* Liability of operators of nuclear ships - Revision of Article X of the International Convention for the Unification of certain Rules of law relating to Bills of Lading - Letters of Indemnity and Marginal clauses. Revision of Article XIV of the International Convention for the Unification of certain rules of Law relating to assistance and salvage at sea - International Statute of Ships in Foreign ports - Registry of operations of ships.

XXV. ATHENS - 1962

President: Mr. Albert LILAR*Subjects:* Damages in Matters of Collision - Letters of Indemnity - International Statute of Ships in Foreign Ports - Registry of Ships - Coordination of the Convention of Limitation and on Mortgages - Demurrage and Despatch Money - Liability of Carriers of Luggage.

XXVI. STOCKHOLM - 1963

President: Mr. Albert LILAR*Subjects:* Bills of Lading - Passenger Luggage - Ships under construction.

XXVII. NEW YORK - 1965

President: Mr. Albert LILAR*Subjects:* Revision of the Convention on Maritime Liens and Mortgages.

XXVIII. TOKYO - 1969

President: Mr. Albert LILAR*Subjects:* "Torrey Canyon" - Combined Transports - Coordination of International Convention relating to Carriage by Sea of Passengers and their Luggage.

XXIX. ANTWERP - 1972

President: Mr. Albert LILAR*Subjects:* Revision of the Constitution of the International Maritime Committee.

Conferences of the Comité Maritime International

XXX. HAMBURG - 1974

President: Mr. Albert LILAR*Subjects:* Revisions of the York/Antwerp Rules 1950 - Limitation of the Liability of the Owners of Seagoing vessels - The Hague Rules.

XXXI. RIO DE JANEIRO - 1977

President: Prof. Francesco BERLINGIERI*Subjects:* Draft Convention on Jurisdiction, Choice of law and Recognition and enforcement of Judgements in Collision matters. Draft Convention on Off-Shore Mobile Craft.

XXXII. MONTREAL - 1981

President: Prof. Francesco BERLINGIERI*Subjects:* Convention for the unification of certain rules of law relating to assistance and salvage at sea - Carriage of hazardous and noxious substances by sea.

XXXIII. LISBON- 1985

President: Prof. Francesco BERLINGIERI*Subjects:* Convention on Maritime Liens and Mortgages - Convention on Arrest of Ships.

XXXIV. PARIS - 1990

President: Prof. Francesco BERLINGIERI*Subjects:* Uniformity of the Law of Carriage of Goods by Sea in the 1990's - CMI Uniform Rules for Sea Waybills - CMI Rules for Electronic Bills of Lading - Revision of Rule VI of the York-Antwerp Rules 1974.

XXXV. SYDNEY - 1994

President: Prof. Allan PHILIP*Subjects:* Review of the Law of General Average and York-Antwerp Rules 1974 (as amended 1990) - Draft Convention on Off-Shore Mobile Craft - Assessment of Claims for Pollution Damage - *Special Sessions:* Third Party Liability - Classification Societies - Marine Insurance: Is the doctrine of Utmost Good Faith out of date?

XXXVI. ANTWERP - 1997 - CENTENARY CONFERENCE

President: Prof. Allan PHILIP*Subjects:* Off-Shore Mobile Craft - Towards a Maritime Liability Convention - EDI - Collision and Salvage - Wreck Removal Convention - Maritime Liens and Mortgages, Arrest of Ships - Classification Societies - Carriage of Goods by Sea - The Future of CMI.

XXXVII. SINGAPORE – 2001

President: Patrick GRIGGS*Subjects:* Issues of Transport Law - Issues of Marine Insurance - General Average - Implementation of Conventions - Piracy - Passengers Carried by Sea.

XXXVIII. VANCOUVER – 2004

President: Patrick GRIGGS*Subjects:* Transport Law - General Average - Places of Refuge for Ships in Distress - Pollution of the Marine Environment - Maritime Security - Marine Insurance - Bareboat Chartered Vessels - Implementation of the Salvage Convention.

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