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PART I

Organization of the CMI
Comité Maritime International

CONSTITUTION

2001

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 registered office is at Ernest Van Dijckkaai 8 B-2000

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 Rembaudville-Nicole speaking for the French delegation, unanimously approved the new Constitution. The Singapore Assembly also empowered the Executive Council to adopt any amendments to the approved text of the Constitution if required by the Belgian government. Exercising this authority, minor amendments were indeed adopted by the Executive Council, having no effect on the way in which the Comité Maritime International functions or is organised. As an example, Article 3.I.a has been slightly amended. Also Article 3.II has been expanded to embody in the Constitution itself the procedure governing the expulsion of Members rather than in rules adopted by the Assembly. By Decree of 9 November 2003 the King of Belgium granted juridical personality to the Comité Maritime International. By virtue of Article 50 of the Belgian Act of 27 June 1921, as incorporated by Article 41 of the Belgian Act of 2 May 2002, juridical personality was acquired at the date of the Decree, i.e., 9 November 2003, which is also the date of entry into force of the present Constitution. Since 9 November 2003, the Comité Maritime International has existed as an International Not-for-Profit Association (AISBL) within the meaning of the Belgian Act of 27 June 1921.
Comité Maritime International

STATUTS

2001

Ière PARTIE - DISPOSITIONS GENERALES

Article 1er

Nom et objet


Article 2

Existence et siège

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

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
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 énumèrera 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.

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;


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 œuvre.

b) (i) Une requête d’exclusion d’un Membre sera faite:
   (A) par toute Association Membre ou par un Membre titulaire;
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.
(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 présument être retirée.

f) (i) Dans le cas d’une requête d’exclusion appuyée sur une carence de paiement prévue à l’alinéa II(a) ci-dessus, le Membre sera exclu à la majorité simple des suffrages exprimés par les Membres en droit de voter.
(ii) En cas de requête d’exclusion appuyée sur un motif prévu au II a) (ii) et (iii) ci-dessus, le Membre sera exclu par un vote des deux tiers des suffrages exprimés par les Membres en droit de voter.

g) Des modifications aux présentes dispositions peuvent être adoptées conformément à l’article 6 des statuts. Les propositions de modifications se feront par écrit et seront transmises à toutes les Associations Membres au plus tard soixante jours avant la réunion annuelle de l’Assemblée à laquelle les modifications proposées seront prises en considération.

III.

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

Article 4
Composition

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

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

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

Article 5
Meetings and Quorum

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

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

Article 6
Agenda and Voting

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

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

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

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

The functions of the Assembly are:

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

PART III - OFFICERS

Article 8
Designation

The Officers of the Comité Maritime International shall be:
a) The President,
b) The Vice-Presidents,
c) The Secretary-General,
d) The Treasurer (and Head Office Director) (hereafter “The Treasurer”),
e) The Administrator (if an individual),
f) The Executive Councillors, and
g) The Immediate Past President.

Article 9
President

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

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

The President shall have authority to conclude and execute agreements on behalf of the Comité Maritime International, and to delegate this authority to other officers of the Comité Maritime International.
Article 7

Fonctions

Les fonctions de l’Assemblée consistent à:

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

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 (et Directeur en chef du bureau) (ci-après «le Trésorier»),
e) l’Administrateur (s’il est une personne physique),
f) les Conseillers exécutifs, et
g) le Président précédant.

Article 9

Le Président


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

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

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

Article 10
Vice-Presidents

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

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

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

Article 11
Secretary-General

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

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

Article 12
Treasurer

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

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

The Treasurer shall submit the financial statements and the proposed

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

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

**Article 10**

**Les Vice-Présidents**

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

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

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

**Article 11**

**Le Secrétaire général**


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

**Article 12**

**Le Trésorier**


Le Trésorier soumet les bilans financiers et les budgets proposés pour révision par les réviseurs et le Comité de révision, désigné par le Conseil.
budgets for review by the auditors and the Audit Committee appointed by
the Executive Council, and following any revisions shall present them for
review by the Executive Council and approval by the Assembly not later
than the first meeting of the Executive Council in the calendar year next
following the year to which the financial statements relate.

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

Article 13
Administrator

The functions of the Administrator are:

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

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

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

Article 14
Executive Councillors

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

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

Each Executive Councillor shall be elected for a term of three years, and
shall be eligible for re-election for one additional term.
exécutif; il les présente après correction au Conseil exécutif pour révision et à l’Assemblée pour approbation au plus tard à la première réunion du Conseil exécutif pendant l’année civile suivant l’année comptable en question.

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

Article 13
L’Administrateur
Les fonctions de l’Administrateur consistent à:

a) envoyer les convocations à toutes réunions de l’Assemblée et du Conseil exécutif, des conférences internationales, séminaires et colloques, ainsi qu’à toutes réunions de comités, de commissions internationales et de groupes de travail,

b) distribuer les ordres du jour, procès-verbaux et rapports de ces réunions,

c) prendre toutes les dispositions administratives utiles en vue de ces réunions,

d) entreprendre toute action, de sa propre initiative ou par délégation, nécessaire pour donner plein effet aux décisions de nature administrative prises par l’Assemblée, le Conseil exécutif, et le Président,

e) assurer la distribution de rapports et documents demandées par le Président, le Secrétaire Général ou le Trésorier, ou approuvées 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.


Article 14
Les Conseillers exécutifs
Le Comité Maritime International compte huit Conseillers exécutifs, dont les fonctions sont décrites à l’article 18.

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

Chaque Conseiller exécutif est élu pour un mandat de trois ans, renouvelable une fois.
Article 15
Nomination

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

The Nominating Committee shall consist of:

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

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

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

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

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

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

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

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

Article 16
Immediate Past President

The Immediate Past President of the Comité Maritime International shall have the option to attend all meetings of the Executive Council, and at his discretion shall advise the President and the Executive Council.
Article 15
Présentations de candidatures

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

Le Comité de Présentation de candidatures se compose de:

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

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

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

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

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

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

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

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

Article 16
Le Président sortant

Le Président sortant du Comité Maritime International a la faculté d’assister à toutes les réunions du Conseil exécutif, et peut, s’il le désire, conseiller le Président et le Conseil exécutif.
PART IV - EXECUTIVE COUNCIL

Article 17
Composition

The Executive Council shall consist of:

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

Article 18
Functions

The functions of the Executive Council are:

a) To receive and review reports concerning contact with:
   (i) The Member Associations,
   (ii) The CMI Charitable Trust, and
   (iii) International organizations;

b) To review documents and/or studies intended for:
   (i) The Assembly,
   (ii) The Member Associations, relating to the work of the Comité Maritime International or otherwise advising them of developments, and
   (iii) International organizations, informing them of the views of the Comité Maritime International on relevant subjects;

c) To initiate new work within the object of the Comité Maritime International, to establish Standing Committees, International Sub-Committees and Working Groups to undertake such work, to appoint Chairmen, Deputy Chairmen and Rapporteurs for such bodies, and to supervise their work;

d) To initiate and to appoint persons to carry out by other methods any particular work appropriate to further the object of the Comité Maritime International;

e) To encourage and facilitate the recruitment of new members of the Comité Maritime International;

f) To oversee the finances of the Comité Maritime International and to appoint an Audit Committee;

g) To make interim appointments, if necessary, to the offices of Secretary-General, Treasurer and Administrator;

h) To nominate, for election by the Assembly, independent auditors of the annual financial statements prepared by the Treasurer and/or the accounts of the Comité Maritime International, and to make interim appointments of such auditors if necessary;

i) To review and approve proposals for publications of the Comité Maritime International;
4ème PARTIE - CONSEIL EXÉCUTIF

Article 17
Composition

Le Conseil exécutif est composé:

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

Article 18
Fonctions

Les fonctions du Conseil exécutif sont:

a) de recevoir et d’examiner des rapports concernant les relations avec:
   (i) les Associations membres,
   (ii) le Fonds de Charité du Comité Maritime International ("CMI Charitable Trust"), et
   (iii) les organisations internationales;

b) d’examiner les documents et études destinés:
   (i) à l’Assemblée,
   (ii) aux Associations membres, concernant l’oeuvre du Comité Maritime International, et en les avisant de tout développement utile,
   (iii) aux organisations internationales, pour les informer des points de vue du Comité Maritime International sur des sujets adéquats;

c) d’aborder l’étude de nouveaux travaux entrant dans le domaine du Comité Maritime International, de créer à cette fin des comités permanents, des commissions internationales et des groupes de travail, de désigner les Présidents, les Présidents Adjoints et les Rapporteurs de ces comités, commissions et groupes de travail, et de contrôler leur activité;

d) d’aborder toute autre étude que ce soit pourvu qu’elle s’inscrive dans la poursuite de l’objet du Comité Maritime International, et de nommer toutes personnes à cette fin;

e) d’encourager et de favoriser le recrutement de nouveaux Membres du Comité Maritime International;

f) de contrôler les finances du Comité Maritime International et de nommer un Comité de révision;

g) en cas de besoin, de pourvoir à titre provisoire à une vacance de la fonction de Secrétaire général, de Trésorier ou d’Administrateur;

h) de présenter pour élection par l’Assemblée des réviseurs indépendants chargés de réviser les comptes financiers annuels préparés par le Trésorier et/ou les comptes du Comité Maritime International, et, au besoin, de pourvoir à titre provisoire à une vacance de la fonction de réviseur;

i) d’examiner et d’approuver les propositions de publications du Comité Maritime International;
j) To set the dates and places of its own meetings and, subject to Article 5, of the meetings of the Assembly, and of Seminars and Colloquia convened by the Comité Maritime International;
k) To propose the agenda of meetings of the Assembly and of International Conferences, and to decide its own agenda and those of Seminars and Colloquia convened by the Comité Maritime International;
l) To carry into effect the decisions of the Assembly;
m) To report to the Assembly on the work done and on the initiatives adopted.

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

**Article 19**

**Meetings and Quorum**

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

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

**PART V - INTERNATIONAL CONFERENCES**

**Article 20**

**Composition and Voting**

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

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

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

Each Member Association present and entitled to vote shall have one vote in the International Conference; no other Member and no Officer of
j) de fixer les dates et lieux de ses propres réunions et, sous réserve de l’article 5, des réunions de l’Assemblée, ainsi que des séminaires et colloques convoqués par le Comité Maritime International;
k) de proposer l’ordre du jour des réunions de l’Assemblée et des Conférences Internationales, et de fixer ses propres ordres du jour ainsi que ceux des Séminaires et Colloques convoqués par le Comité Maritime International;
l) d’exécuter les décisions de l’Assemblée;
m) de faire rapport à l’Assemblée sur le travail accompli et sur les initiatives adoptées.

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

Article 19
Réunions et quorum


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

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

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

PART VI - FINANCE AND GOVERNING LAW

Article 21

Arrears of Subscriptions

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

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

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

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

Article 22

Financial Matters and Liability

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

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

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

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

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

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

6ème PARTIE - FINANCES

Article 21
Retards dans le paiement de Cotisations

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.


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
Part I - Organization of the CMI

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 (Moniteur belge of 5th November 1919), as subsequently amended, granting juridical personality to international organizations dedicated to philanthropic, religious, scientific, artistic or pedagogic objects, and to other laws of Belgium as necessary.

PART VII - ENTRY INTO FORCE AND DISSOLUTION

Article 24

Entry into Force

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.
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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 (Moniteur belge 5 novembre 1919) accordant la personnalité civile aux associations internationales poursuivant un but philanthropique, religieux, scientifique, artistique ou pédagogique telle que modifiée ou complétée ultérieurement et, au besoin, par d’autres dispositions de droit belge.

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

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

7 Peter Verstuyft (1948) graduated in Applied Economics from the University of Antwerp (UFSIA) in 1970 and obtained a master’s degree in Financial Management at the Flemish Institute for Economics (VLEKHO) in 1976. He obtained a postgraduate in Managing Ship Production at the West European Graduate Education in Marine Technology (University of Strathclyde) in 1980 and in International Fiscal Law at the University of Antwerp in 1999. He started his professional career in 1972 with the Boelwerf shipyard where, in 1980 was promoted to Financial Manager. From 1985 to 1992, Peter Verstuyft was the Managing Director of Boelwerf with overall responsibility for a shipyard with about 2,500 employees and building seagoing vessels up to 150,000 DWT. Between 1993 and 1996, Peter Verstuyft was a member of the management of URS, a group of companies performing towage on the river Scheldt in Belgium and the Netherlands, salvage at sea and off-shore support services. From 1997 to 1999 he was Chief Financial Officer of AMI, a network of about 30 forwarding companies situated in Europe, Middle East and mainly Africa. Mid 2003 he was appointed as Secretary General of EXMAR, the industrial maritime group to which EXMAR Shipmanagement belongs, a company offering crewing services and technical and management services to seagoing vessels, of which he was Managing Director until end 2008. Beginning 2009 Peter Verstuyft became Managing Director of the Royal Belgian Shipowners’ Association, from which he retired on August, 31st 2015. He is Chairman of the Board of the Antwerp dockpilots company BRABO. Furthermore, Peter Verstuyft is Member of the Board of ANKERWIJS, holding a group of 6 primary schools in Antwerp, totalling 2100 pupils, and he was a Member of the Board of the HR services group of companies ACERTA from 2001 till 2013, being Chairman the last six years.

8 Ann Fenech graduated from the University of Malta in 1986. She obtained her Masters degree in maritime law from the University of London in 1989. She is the Managing Partner and Head of the Marine Litigation Department of Fenech & Fenech Advocates - Malta. In 1986 she joined Holman Fenwick and Willan in London until 1991 when she moved to the New Orleans firm Chaffe, McCall. In 1992 she joined Fenech & Fenech Advocates Malta and set up the Marine Litigation Department. She
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deals with a cross section of marine related disputes ranging from collisions to ship building contracts. She has assisted in the drafting of a number of maritime related laws in Malta and lectures extensively on the subject in Malta and abroad; she was the Chairman of the Pilotage Board from 2000 up to 2010, she is the President of the Malta Maritime Law Association, a Council Member of the European Maritime Law Organisation and in June 2012 she was awarded Best in Shipping Law at the European Women in Business Awards held in London. In March 2012 she was appointed Director on Premier Capital plc and in December 2012 she was appointed Director of Bank of Valletta plc. She is also a founding committee member of the Malta Maritime Forum. In October 2013 she was appointed as an Honorary Patron sitting on the Board of Advisers of the Malta Law Academy, a foundation of Advocates in Malta. She was awarded Best in Shipping Law at the European Women in Business Awards in 2012, 2014 and 2015.

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

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

11 He is a lawyer graduated from the School of Law and Social Sciences of the University of Buenos Aires in 1978. He was its Standard-bearer and he was also granted the GOLD MEDAL of the School of Law and Social Sciences of the University of Buenos Aires as Outstanding Graduate. He was Secretary-General of the Argentine MLA, is Member of its ExCo and is Director Director of the Editing
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[As constituted June 2015]

Note: In terms of Art. 9 of the CMI Constitution, the President is ex officio a member of all Committees and Working Groups

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[As constituted November 2015]

Note: In terms of Art. 9 of the CMI Constitution, the President is ex officio a member of all Committees and Working Groups

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PART II

The Work of the CMI

ISTANBUL COLLOQUIUM
7-9 June 2015

NEW YORK CONFERENCE
3-6 May 2016
ISTANBUL COLLOQUIUM

7-9 June 2015

Welcome by the President of the CMI

PRESENTATIONS

DOCUMENTATION
- GENERAL AVERAGE
- OFFSHORE ACTIVITIES

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Ladies and gentlemen, Bulent Sozer, Kofi Mbiah, Samim Unan, President of the Turkish MLA, distinguished guests
I welcomed you last night and I do so again.
Twelve months ago we were in Hamburg and I reminded you of the great legacy we as maritime lawyers had received from the Hanseatic League, the Rolls of Oleron and the Laws of Wisby.

Let me briefly remind you of the significance to international trade and the development of law of this part of the world.

Firstly in relation to trade: I am indebted to a former President of the Maritime Law Association of Australia and New Zealand (Tom Broadmore, a recently retired judge of the District Court in New Zealand) who gave a paper last year at the Annual MLAANZ conference, *inter alia*, about a visit he had made to Bodrum in Southern Turkey and in particular the Underwater Archaeological Museum where the remains of a ship which was excavated between 1985 and 1994 were on display. The wreck had been discovered in 1982, close to the eastern shore of Uluburun, about 6 miles south east of Kas, in Southwest Turkey. The wood of the vessel has been dated at 1305BC. That in itself is astounding but what particularly interests me about this wreck is the list of cargo which was found on it.

- Copper and tin ingots
- Canaanite jars and pistacia resin
- Glass ingots
- Miscellaneous cargo including logs of Blackwood from Africa, ivory, hippopotamus teeth, tortoise carapaces, Cypriot pottery and oil lamps, bronze and copper vessels, beads and other jewellery items
- Weapons and tools
- Pan-balance weights and edibles.

It has been suggested that the ship had set sail from either a Cypriot or Syro-Palestinian Port and was sailing to the region west of Cyprus, somewhere in the Aegean Sea. Rhodes was a possible destination and it has also been suggested that a probable final destination was one of the Mycenaean Palaces in mainland Greece. But what is also of interest is that the objects on board the ship are said to have ranged geographically from Northern Europe to Africa,
as far west as Sicily, and as far east as Mesopotamia. They were the products of 9 or 10 cultures, suggesting that by the late Bronze age the Aegean was the medium of an international trade perhaps based on royal gift-giving in the near east. The vessel was only about 15 meters long.

Secondly - the law. Let me also remind you of the development of the law from Roman Times (John Hare touched on this in his welcome letter on the website). On this occasion I am indebted to a paper given by one of our retired Federal Court Judges Arthur Emmett in July last year “Roman Traces in Australian Law” in which he discussed the development of Roman Law and in particular during the period when it was ruled from Constantinople and Petrus Sabbatius became Emperor in AD527. He is presently known as Caesar Flavius Justinianus (or Justinian). He ordered the compilation of a collection of imperial enactments and that took place by AD529 in the Codex. The next step in the process was the compilation of a Digest comprising the writings of the classical jurists organised under titles (not unlike Halsbury’s Laws of England for those familiar with that text). Justinian also ordered the publication of the Institutiones, Elementary Principles (an elementary textbook) which were published in Constantinople on the 21st November AD533. The Institutes, as they are known, came into force as law, together with the Digest, on 30th December AD533 and together with subsequent further enactments made during his reign until AD565. The Codex, the Digest and the Institutes constitute the corpus juris civilis, or the body of the Civil Law. As Justice Emmett pointed out the jurisprudence of the corpus juris civilis was reborn in the 12th Century and spread throughout the whole of Europe in the centuries thereafter.

Justice Emmett comments that the “rediscovery of the corpus juris civilis in Bologna coincided with the flourishing of the Italian City States and their vigorous maritime commerce. For their maritime law, the Italian City States adopted the principles of the corpus juris civilis and the Basilica”. He also commented that parts of the Rhodian Sea Law were “clearly enough derived from the corpus juris civilis” and referred to various chapters which are translations of provisions in the Codex and the Digest, and the Book 14 of the Digest contains detailed principles of some areas of the law of the sea. “Title Two of Book 14 of the Digest” is entitled “De Lege Rodia De Iactu”, or the Rhodian Law of Jettison. It deals with the Law of General Average Contribution.

Justice Emmett concluded “Whatever might be the true origin of the Rhodian Sea Law of the 17th Century, there seems to be a valid basis for attributing to it, at least in part, the jurisprudence of Rome.”, which had derived from Constantinople.

I urged you in my Welcome Letter to make time to visit Ephesus. That will give you an idea of the significance of trade from what was once upon a time a, if not the, leading port in the region.
Coming to more modern times, I pay tribute to the remarkable collection of bills of lading which you will see outside, and the fine booklet about it, as well as the other gifts which you would have found in your registration bags. They will be a stunning reminder of this Colloquium for years to come and I thank the Turkish MLA for their generosity in providing them.

I would like to thank our sponsor: The Turkish Ship Building Association and pay tribute to all the hard work that John Hare, Bulent and ETIX have put into the organisation for this meeting.

Finally, I commend and thank all the Chairs and Rapporteurs of the International Working Groups and everyone who has agreed to provide a paper at this meeting. Without them all of these events would not take place.

I hope when you leave here you will understand why Napoleon Bonaparte said “If the whole world was one country Istanbul would be its capital”.

Istanbul Colloquium
PRESENTATIONS

Key-note speech by the Chairman of the Organising Committee,
Bülent Sözer

(Other presentations, consisting of slides, are available on the website:
Good Morning
President of Comité Maritime International, President of Turkish Maritime Law Association, dear delegates, esteemed colleagues

Allow me to say once more that we are extremely honoured to welcome you to Istanbul and therefore my sincere thanks are due to CMI for adopting this decision.

Istanbul, being an imperial city, throughout history, served as capital to different states, but one must always name the three most majestic empires: the Roman Empire, Byzantium and the Ottoman Empire.

Istanbul, I dare say, has one unique characteristic: To be a cradle of law, indeed for such laws that are either still valid or served as the basis or even source of several modern legal systems.

Without expanding much on the subject, I would like to dwell on couple of simple but highly meaningful examples.

I would also, in the meanwhile, like to point out the main themes selected for this Colloquium, which collectively ensured that this occasion shall stand out as one of the most memorable congregations of the CMI.

To start with, we shall have general average. I must confess that I am exceedingly delighted that we are having, as one of the main themes for discussion, an institution on which Istanbul has a certain bearing and in more than one way:

General average constitutes and reflects one highly distinctive and characteristic impact the sea from time immemorial had and still keeps on having on human beings. That is the awareness, conception of ‘One for all, all for one’. General average reflects the sense and appreciation of solidarity during periods of crises, comradeship under hazardous circumstances, readiness to make some sacrifices to ensure better futures.

The very humane way of thinking, taught us by the great educator, the sea. One cannot of course dispute the enormous capacity of the sea to educate human beings. Being alone between the sea and the sky with never ending

* Chairman, Organising Committee.
Key-note speech by the Chairman of the Organising Committee Bülent Sözer

horizons, which are always ever too far … Men received many many lessons from the sea … general average being one of them, may be the major one.

Incidentally, I may safely claim that, the most representative general average type, which we, almost habitually, use to explain this concept to laymen, understandably, jettison of cargo, although claimed to have originated from de lege Rhodia de jactu, was first put on black and white, in a palace not far from here, by the lawyers working under Tribonianus, being Quaestor Sacri Palatii for Emperor Justinianus, when drafting the Corpus Iuris Civilis during 529-534.

What is even more meaningful … İstanbul, confirming what I have said couple of minutes ago, served as the cradle of contemporary Civil Law system of European states, providing, at least a modest, inspiration to the Common Law. The Corpus Iuris Civilis, as you my esteemed colleagues know much better than I do, was the main and rather the only source of inspiration the Glossators and Post-Glassators turned towards in their efforts to revive the Roman Law during 10th and 11th centuries.

Corpus Iuris Civilis, even after this period was never ignored by the scholars who we now recall and respect as the founders of the modern Civil Law system …

… I trust, therefore, it should not be an exaggeration or overstatement to say that the keel for the modern European law was first laid in İstanbul.

The sea gave inspiration to human beings and led human beings towards creating rules for survival. Sea gave human beings life, nourishment, wealth; compelled human beings to learn, gave them the idea/culture to look beyond what is seen and explore what is unseen. Sea was and still is a major educator compelling us to try to learn and understand what is not apparent to the naked eye. Alas, gradually, human beings started to destruct, demolish almost annihilate, not entirely an unexpected mode of behaviour, if one even for a moment looks back and remembers the destructive capacity of human beings, this unbelievably rich resource of life, which gives without asking for something in return or as a pre-condition. It is not necessary to till or sow, as we should to receive returns from the ground. The sea is always fertile, always ready to feed; therefore, much more generous than the Mother Earth .. as long as it is not destroyed.

Luckily this congregation will also witness the efforts being undertaken by distinguished members of our community with far reaching views, to save the sea, together with the surrounding nature from looming damages, created by some greedy beings ... Another major theme of the Colloquium is ‘Offshore Drillings’. Under the leadership of one of the most eminent member of this fraternity, group of devoted experts will endeavour to see what can be done to protect the sea alongside the environment from grave damages, or alternatively and to the possible extent, explore the means as to how to restore it to its original condition, should further disasters occur.
Now therefore we have, a memorable arrangement for the İstanbul meeting: One major theme, general average, the unique institution with no parallel in other branches of law and through which the sea taught human beings the idea of solidarity and camaraderie during times of peril and on the other hand the other major theme, how to save the sea from savage terminators.

I dare say best combination for this fraternity to show its respect to the sea.

With heartfelt thanks to all of you, for being here for this occasion.
REPORT OF THE MEETING HELD AT THE 2015 ISTANBUL COLLOQUIUM
by Taco van der Valk

HOW HAVE GENERAL AVERAGE CONCEPTS DEVELOPED ACROSS MARITIME COUNTRIES AND JURISDICTIONS,
by Didem Algantürk Light

(Other documentation, consisting of slides, is available on the website http://www.cmi2015istanbul.org/?p=General)
REPORT OF THE MEETING HELD AT
THE 2015 ISTANBUL COLLOQUIUM

TACO VAN DER VALK

Introduction
At the (first) meeting of the International Subcommittee on General Average (ISCGA) at the CMI/IMLA Dublin Symposium (28 September – 1 October 2013) those GA/YAR topics were identified that would need further work.

Directly following that first ISCGA meeting a meeting was held by the International Working Group on General Average (IWGGA). In that meeting it was decided to allocate the work to be done on the selected topics to five subgroups dealing with:

1) Financial Issues
2) Rule D
3) Rules X and XI, Security Documents (and processes), Low Value Cargo
4) Salvage, Rule B (Tug and Tow)
5) Tidying up

The subgroup Tidying up was only to become active at a later stage. The other four subgroups did preparatory work which was discussed at a meeting of the full IWGGA in London on 3 March 2014. At that meeting it was decided to focus the work in the run-up to the CMI Hamburg Conference on finalizing three (subgroup) reports:

1) Financial Issues
2) Rules X and XI, Security Documents (and processes), Low Value Cargo
3) Salvage

The three reports were circulated by letter of the CMI President of 19 May 2014. The reports were to form the basis of the discussion of the ISCGA meeting at the Hamburg Conference to be held on 14 and 15 June 2014. A fourth report on Tidying up/Wordings was issued prior to the Hamburg Conference as a matter of record of the items that had so far been agreed to need review. The fourth report would, however, not be discussed at the Hamburg Conference.

The (second) meeting of the ISCGA at the Hamburg Conference was held on Saturday 14 June 2014. At the start of the meeting the chairman
reiterated that the object of the whole process is to strive for unanimous decisions with regard to a possible revision of the York-Antwerp Rules. It was also noted that the representatives of ICS and other organizations present at the meeting had indicated that they were unable to cast firm votes in this ISCGA meeting as the points raised in the three reports would still have to go through a formal decision making process within their respective organizations. These meetings were expected to take place in the coming months. The chairman therefore made it clear that during this meeting no firm decisions could be made. The three reports were then discussed as reported in the Hamburg ISCGA Report.

Following the ISCGA meeting at Hamburg the IWG wanted to make sure that the representatives of the main stakeholders were clear on which particular points of principle the IWG wished to receive further feedback. Therefore a ‘clearing-up’ meeting was held in London on 29 July 2014 between representatives of ICS and IUMI, and the chairman and both rapporteurs of the IWG. Following that meeting some tentative conclusions were received from ICS. On 3 December 2014 another meeting was held to clarify these tentative conclusions, to obtain a clearer view of IUMI’s views and to see whether the IWG could work towards one document which would show all remaining points of discussion, with some drafting options along with them. Co-rapporteur Richard Cornah prepared such a document under the heading ‘CMI Drafting Meeting Papers’ which were discussed in a full IWG meeting in London on 25 February 2015. The results of the discussions at that meeting and further documents exchanged by email were to be submitted to the next, i.e. third, ISCGA meeting which would take place in Istanbul.

The Working Papers for the ISCGA meeting in Istanbul were distributed by letter of the CMI President of 5 May 2015. A Supplement to the Working Papers was distributed by email by co-rapporteur Taco van der Valk on 29 May to all those that had attended the previous two ISCGA meetings in Dublin and Hamburg.

This (third) meeting of the ISCGA was held on Saturday 6 and Sunday 7 June 2015 just prior to the CMI Istanbul Colloquium. The ISCGA meeting, under the chairmanship of Bent Nielsen, was attended by the following (40) persons:

Eduardo Albors (Spain)
Marina Aleiferopoulou (Greece)
Andrew Bardot (United Kingdom/International Group)
Giorgio Berlingieri (Italy)
Ben Browne (United Kingdom/IUMI)
Richard Cornah (United Kingdom/Co-rapporteur)
Frédéric Denèfle (France)
Béatrice Favarel (France)
Vincent Foley (United States)
6 June 2015

After opening the meeting the chairman explains the role of a CMI ISC meeting and refers to the Working Papers with Supplement which were to be discussed. He reiterates the importance of reaching a compromise between the main stakeholders. As some points remain controversial, the chairman suggests to start work on the non-controversial points. This would create the possibility to go over the controversial points again over lunch with the representatives of the main stakeholders, in the hope of reaching a compromise, which could then be discussed further in the full ISCGA meeting continuing after lunch.

The non-controversial points are then discussed in the order as found in the Working Papers.
SECTION A - DRAFT RULES

1) Rule B – Tug and tow (Working Papers + Attachment 3 in the Supplement)

   Browne/UK/IUMI gives the introduction of the issue and explains there are four options:
   
   (i) take it out
   (ii) leave it in as it is
   (iii) make some minor amendments (with a possible clarification suggested by Harvey/UK/AMD)
   (iv) use the solution as suggested under B3 in Attachment 3 in the Supplement.

   The question is: where does the common maritime adventure end?

   The chairman invites the other ISC members to comment.

   Harvey/UK/AMD warns of the danger in defining things too much: some things will be looped out.

   Spencer/US states that the US has not taken a position so far, so that he will speak for himself. There may be difference in practice, but he suggested to leave Rule B as it is.

   Cornah/UK would not favour leaving the rule alone, for the sake of clarity. There is inconsistent treatment in practice because of a lack of definition. Perhaps it should be brought under Rules X or XI. He is supportive of Harvey’s suggestion regarding the ‘common maritime adventure’. He felt the more prescriptive approach of Browne/UK/IUMI was not going to help.

   The chairman suggests to leave it as it is, plus the Harvey/UK/AMD amendment, and subject the text to rigorous road testing. The proposal would be to take the text as set out at the top of the final page of Attachment 3 and add the Subsection 3 in square brackets. Browne/UK/IUMI, Hahn/Germany and Khosla/UK/ICS agree.

2) Rule E – Provision of information (Working Papers + Attachment 2 in the Supplement)

   Spencer/US gives the introduction of the issues raised in Drafting Note 2, basically being that under the current rules each request from the adjuster for information is thought to restart the clock on the 12 month time bar. He states that there is support in the US for change. The IWG subgroup has come up with alternative wording.

   Cornah/UK asks whether Amendment A or Amendment B is preferred.

   McDonald/UK/AAA favours Amendment B, but thinks the insertion of the period of 12 months would lead to tardiness. He would rather have that phrase moved to paragraph 3, as was suggested in Attachment 2 (part of the Supplement to the Working Papers).

   Browne/UK/IUMI reiterates that the people that pay will need to know that they are to supply information. He also wants to know what will happen to expenses that materialize after the 12 months period from the termination
of the common maritime adventure. He suggests that the 12 month period should run from the date of payment instead of from the date the adventure ends. The guidelines could be used to show the manner in which the interests are to be told. His comments were to be applied to whichever of the two Amendments (A and B) was to be adopted.

Spencer/US agrees with moving the 12 month period to paragraph 3, but also with the need for proper notification.

Cornah/UK suggests to change it to 12 months from ‘payment or loss’.

Harvey/UK/AMD feels a period of 12 months after payment would be too long. 3 months would be enough.

Khosla/UK/ICS supports amendment B together with paragraph 3, but wants to keep the current threshold (in paragraph 3) that the adjuster’s estimate may be challenged only on the ground that it is manifestly incorrect. McDonald/UK/AAA agrees with Khosla/ICS on this point.

Denèfle/France feels the 3 month period suggested by Harvey/AMD to be too short. The position of the insurer needs to be taken into account more. 12 months is ok.

Hahn/Germany is of the opinion that delay occurs because of the dispute between the insurer and the insured. The text of the rule should not be dependent on that. He has a case with a delay of 7 years. This has to be cut down by the new rule.

Ross/UK/ICS supports the position taken by McDonald/UK/AAA.

Cornah/UK returns to Denèfle/France’s opposition to changing the period of 12 months to 3 months. Harvey/AMD explains his suggestion on this point further. Cornah/UK summarizes the discussion by stating that there seems to be agreement about moving towards Amendment B, together with McDonald/UK/AAA’s suggestion to move the period of time from paragraph 2 to paragraph 3, but that a difference of opinion remains about adding/keeping the phrase that challenges of the estimate should be limited to cases where the estimate is manifestly incorrect. Kruit/Netherlands adds the point made earlier about proper notification.

Cornah/UK explains why the manifestly incorrect phrase disappeared from the draft. Browne/UK/IUMI is of the opinion that it should not be made too difficult and the suggested paragraphs do not mention quantum. He suggests a rewording that ‘evidence in support of the quantum of a claim should be supplied within 12 months of payment’.

Cornah/UK suggests to keep the 12 months from the date of payment of the sacrifice or general average loss. He suggests Harvey/UK/AMD, Spencer/US, Browne/UK/IUMI, Khosla/UK/ICS, and Hahn/Germany to discuss this further.

The discussion then turns to points 2.4 and 2.5 of Drafting Note 2. Spencer/US again summarizes the issue and explains that 2.5 was intended to replace the manifestly incorrect phrase contained in the current rule.
Khosla/UK/ICS states that ICS does not support 2.4 and 2.5. It is felt that these are issues for insurers that should be arranged for in insurance policies. They are not a reason to change the rule. Kubo/Japan agrees with her position. Browne/UK/IUMI supports the insertion of the words: ‘without prejudice for any party to challenge the Adjustment’ in paragraph 3 of Rule E as suggested in para 2.5 of the Working Papers.

3) Rule E – Treatment of recoveries (Working Papers + Attachment 2 in the Supplement)

Spencer/US explains the proposal by adjusters.

Harvey/UK/AMD agrees with the point raised but suggests to add ‘pursuing a recovery’ to the text suggested under point 3.1, so full particulars are not only to be supplied when a recovery is actually achieved. Browne/UK/IUMI agrees.

Kruit/Netherlands wonders who would be considered to be ‘a third party’ in the suggested text.

McDonald/UK/AAA supports Harvey/UK/AMD’s point.

It is agreed that these points will be discussed by the same group (Harvey/UK/AMD, Spencer/US, Browne/UK/IUMI, Khosla/UK/ICS, and Hahn/Germany) leading to a proposal that can be discussed the next day.

McDonald/UK/AAA does not support the variations suggested under point 3.2. Khosla/UK/ICS agrees with the position taken by McDonald/UK/AAA.

6) Rule X – Detention during restowage (Working Papers + Attachment 2 in the Supplement)

Spencer/US explains the issue.

Browne/UK/IUMI asks (one of) the adjusters to explain how it works in practice. He just wants to prevent more money going into GA.

Cornah/UK refers to the background as set out in Lowndes.

Khosla/UK/ICS supports the change, but suggests to replace ‘However’ (the provisions of Rule XI…) with ‘Nonetheless’.

Harvey/UK/AMD points out there is difference of practice amongst adjusters on this point and he supports a clarification ‘either way’.

The chairman suggests to leave the point for the next day.

7) Rule XI – Detention for common safety (Working Papers + Attachment 2 in the Supplement)

Cornah/UK explains the issue.

Khosla/UK/ICS wants to keep the YAR 1994 wording. Shipowners do not understand why the Coast Guard investigation would not be the result of the entry of the vessel in the port of refuge.

Cornah/UK replies that the investigation is the result of the collision, and in this scenario the detention not for the common safety. The wording is just intended to make it a little bit more clear.
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Hahn/Germany that the issue of coast guard detention in this context is a grey area.

Denève/France finds that a ship may stay longer in the port for different reasons. A stay for the common safety is ok, but not for other reasons.

Magee/Ireland supports the inclusion.

Browne/UK/IUMI agrees that there are a number of reasons why a ship may be further detained that should not be GA, e.g. arrest, discovery of stowaways.

Bardot/UK/IG says that detention or inspection delay for matters unrelated to the GA Act/common safety should be excluded but delays flowing from the GA incident, such as for classification survey after temporary repairs should be included. Just a question of drawing the appropriate line.

McDonald/UK/AAA thinks it is a matter of common sense. The further detention must be a direct result of the GA act. A classification delay would be clearly allowable.

Khosla/UK/ICS agrees with the point on classification, but wants the wording to be clear.

Harvey/UK/AMD is confused. While asking to maintain the YAR 1994 position, shipowners now would seem to be asking for more.

Light/Turkey states that you would need to look at each case considering Rules C, VII and XI.

The chairman concludes that the suggested wording does not seem to acceptable. Harvey/UK/AMD thinks we could also do without an amendment, which view is supported by Hahn/Germany.

It is concluded that the amendment will no longer be pursued.

9) Rule XI – Definition of port charges (Working Papers + Attachment 2 in the Supplement)

Cornah/UK explains the issue raised by the Trade Green judgment. The amendment is to be seen as only a clarifying amendment.

Kubo/Japan feels there is no real need to amend, but has not strong objection to a change.

McDonald/UK/AAA supports an amendment, but suggests to amend the text to ‘(…) enable a vessel to enter and remain at a port of refuge (…)’.

Browne/UK/IUMI supports the wording suggested under 9.3, but concludes that it in fact means another extension of GA.

Hahn/Germany feels that the amendment reflects current practice.

Khosla/UK/ICS supports the clarification which is not to be seen as an extension.

The chairman asks Kubo/Japan whether he can live with the suggested amendment. He confirms that this is so.

10) Rule XI – Amendment to XI(d)(iv) – Consistency with X(b) (Working Papers + Attachment 2 in the Supplement)

Cornah/UK explains the issue.
Browne/UK/IUMI states he is willing to agree to another concession. Khosla/UK/ICS supports the correction of the earlier omission, which should again not be seen as an extension of GA.

11) Rule XIII – Bottom painting (Working Papers + Attachment 2 in the Supplement)

Cornah/UK explains the issue arising from the change in bottom painting technology since 1974. Browne/UK/IUMI would opt for 24 months, to which there are no objections.

13) Rule XVII – Value at inland destinations (Working Papers + Attachment 2 in the Supplement)

Cornah/UK explains the issue. Browne/UK/IUMI states he is willing to agree to yet another extension of GA. Harvey/UK/AMD replies it is not an extension as it is what adjusters do now anyway.

The chairman concludes that there is agreement on the principle, but that the wording may need another look. Cornah/UK and Harvey/UK/AMD are willing to have another look at the wording.

14) Rule XVII – Treatment of low value cargo (Working Papers + Attachment 2 in the Supplement)

Cornah/UK explains the issue and the need to create transparency. The rule needs change to reflect current practice. Denèfle/France understands the current practice means the owners of low value cargo will not be chased for a contribution, but he wants to know who will pick up the contribution for the cargo not chased. Will the other cargo interests pick up the bill, or the shipowner?

Cornah/UK understands Denèfle/France’s problem, but suggests the GA community is benefitting as a whole from excluding low value cargo. The practical benefit will be that for example LCL-containers on large container vessels may be disregarded, and this will get the flow of cargo moving. He suggests the text also reflects current practice.

O’Connor/Canada addresses the drafting of the suggested provision. Should ‘disproportionate’ be changed to ‘uneconomical’ or something similar.

Cornah/UK replies that the word ‘disproportionate’ was copied from LOF.

Hahn/Germany wonders whether it may be legally challenged. Khosla/UK/ICS thinks that on the balance, the practice as it is should be allowed to continue, without a change of wording.

Denèfle/France is fearful that, if such a rule would be adopted, it would encourage owners of low value cargo not to buy cargo insurance. Cornah/UK replies that the wording does not mention low value cargo as such.
Furthermore he believes the problem is already there: a lot of cargo already is uninsured.

The chairman addresses the adjusters: is it ok to have no rule? Harvey/UK/AMD agrees with Cornah/UK, but understands Denève/France’s concern. He would rather have the rule, also from a legal point of view, in line with Hahn/Germany’s concern. Spencer/US also feels it would be very helpful to have a formal embodiment of the existing practice.

Browne/UK/IUMI supports the rule generally, but has his concerns about the text. How does the adjuster know about the value and the eventual contributions? Cornah/UK explains that some cases are obvious at the outset. In other cases the adjuster just lets the security collection run for a while and gets a pretty good feel after about two or three weeks. The adjuster may already have collected security, but almost certainly not have released LCL’s.

The chairman suggests Browne/UK/IUMI to discuss further suggestions during the lunch break.

Khosla/UK/IUMI concludes that if the adjusters would find the text helpful, shipowners would support it.

The meeting is then adjourned for lunch. During lunch the representatives of the main stakeholders go over the controversial points again, in the hope of reaching a compromise, which would then be discussed further in the full ISCGA meeting after lunch.

The chairman reopens the meeting and informs the meeting that the representatives of the main stakeholders were able to reach an understanding about the following controversial issues:

• Salvage (Rule VI) would remain in the Rules. Browne/UK/IUMI added, however, that no agreement had been reached yet on the issue of differential salvage.
• Interest (Rule XXI) would be set at Libor + 4%.
• Commission (Rule XX) would go out.
• Crew wages (Rule XI) would remain in.

The understanding is of course subject to drafting issues and a recognition that the issues were interrelated, particularly the points about interest and commission.

The chairman then suggests to go over the items not discussed in the morning in accordance with the table of contents of the Working Papers.


As no agreement on this point had been reached between the stakeholders, and further discussion was needed, the chairman suggests to discuss this point the next day.
5) Rule VI – Reapportionment of salvage (Working Papers + Attachment 2 in the Supplement)

Cornah/UK explains the issue. The focus would lie on paragraph (b) of the wording set out in paragraph 5.3 of the Working Papers. Cornah/UK points out that in paragraph (b)(i) the phrase ‘(...) loss or damage to goods (...)’ should read ‘(...) loss or damage to property (...).’ He also points to the earlier attempts to draft a clause (see paragraphs 5.2 and 5.3 of the Working Papers and suggests it may not be the happiest piece of drafting.

O’Connor/Canada agrees with the drafting point. The latest proposal is structured: ‘if... or, or, or’. Should it not be ‘if... and, and, and’?

Browne/UK/IUMI points to an error in subparagraph (d), where ‘(...) to the extent of the specified (...)’ should read ‘(...) to the extent specified (...).’

Kubo/Japan suggests that the words Salvage payments at the beginning of subparagraph (c) should be substituted by ‘Expenditure in the nature of salvage’.

A general discussion then follows about the drafting, particularly on whether the approach of the text suggested in 5.2 or the one suggested in 5.3 should be preferred. While Kubo/Japan and O’Connor/Canada prefer 5.2, the text suggested in 5.3 attracts more votes.

O’Connor/Canada still does not like the draft and suggests changes, particularly to take the negative out of each subparagraph. O’Connor/Canada, Khosla/UK/ICS and Browne/UK/IUMI will have another look at the drafting.

At the suggestion of Denèfle/France the chairman moves to discuss to subject on principle. Denèfle/France questions the reapportionment where salvage security has already been collected from cargo owners/insurers. Why should we stick to the current practice? Cornah/UK explains that it may still happen that shipowners pay in full and recover from cargo, but that this occurs very little due to the change in relative value of ship and cargo. The reapportionment appeared in the 1974 Rules and is reflected in historical practice in all countries except, for a time, the UK. Reapportionment has been the default rule for a long time. But in special circumstances adjusters suggest not to do it. The objective now is to have no reapportionment unless it makes a difference. Denèfle/France however feels that after salvage is paid the cargo does not expect any other GA costs. Denèfle/France however is of the opinion that differential may open up more discussions so that the exception would in effect become the principle.

Browne/UK/IUMI expresses concerns about the draft regarding differential salvage and gives examples highlighting extra costs and interest involved if one party goes to arbitration. Costs and interest should therefore be taken out of the equation.

Khosla/UK/ICS states that ICS wants differential salvage to remain in.
Kubo/Japan states that differential salvage should not be included, which view is supported by Magee/Ireland.

McDonald/UK/AAA thinks it is axiomatic that when one steps out of the community to gain an advantage, that advantage should be taken away.

The chairman concludes that is better to let the matter rest for a while, and to decide on the issue of differential salvage the next day.

12) Rule XIV – Temporary repairs (Working Papers + Attachment 2 in the Supplement)

The chairman suggests to discuss this topic the next day.

15) Rule XVII – Deductions in respect of salvage (Working Papers + Attachment 2 in the Supplement)

Cornah/UK explains the issue.

Hahn/Germany warns that 100% cargo value may still be exceeded due to legal costs.

Browne/UK/IUMI feels this is a good compromise that IUMI will support. It will speed up the work of the adjusters.

The chairman concludes that the proposal is accepted.

16) Rule XVII – Personal effects (Working Papers + Attachment 2 in the Supplement)

Cornah/UK explains the issue.

The chairman concludes that the proposal is accepted.

20) Rule XX – Commission (Working Papers + Attachment 2 in the Supplement)

The chairman reiterates the agreement reached between ICS and IUMI that commission will go out provided agreement is reached on the other (connected) issues.

21) Rule XXI – Interest (Working Papers + Attachment 2 in the Supplement)

The chairman reiterates that ICS and IUMI to have reached an agreement in principle on Libor + 4%.

In view of currency issues (Libor USD, Libor GBP etc.) and the period of the rate (6 months Libor, 12 months Libor) Måkestad/Norway and Van der Valk/Netherlands are requested to make a text proposal with the interest rate solution of Cefor/Nordic Plan in mind.

22) Rule XXII – Cash deposits (Working Papers + Attachment 2 in the Supplement)

Harvey/UK/AMD explains the issue. The wording may need further work. A requirement for a receipt of payment from the adjuster should be included. The 60 days may need to be changed to 90 days, and the item raised in 22.5 should be considered.

McDonald/UK/AAA warns about countries with exchange control problems. The adjuster may in fact not have control over cash deposits.
Denèfle/France explains that cash deposits are not preferred by insurers. They rather use guarantees and provides an example of a problematic case in Morocco.

O’Connor/Canada has problems with the drafting in the suggested subparagraph 2 and the text suggested under point 22.5.

The chairman asks Harvey/UK/AMD and O’Connor/Canada to help with an alternative wording.

SECTION B – OTHER MATTERS

1) Currency of the adjustment (Working Papers + Attachment 2 in the Supplement)

Harvey/UK/AMD explains the issue, and particularly the abandonment of the idea of using SDR’s as a form of currency.

Browne/UK/IUMI does not favour leaving it as it is. English law on the issue is not easy to apply, and a basis is needed on which to decide, if one can be found. Knowing the applicable currency at the earliest possible stage is important for insurers’ reserving purposes.

The meeting is then adjourned for the day, and is reopened the next morning.

7 June 2015

SECTION B – OTHER MATTERS (continued)

2) Role of the adjuster (Working Papers + Attachment 1 in the Supplement)

Browne/UK/IUMI explains the issue. He is of the opinion that the issues in the rules that are left to the discretion of adjusters would justify guidelines, whether or not linked to a rule in the YAR themselves, clarifying the adjuster’s role. He notes that the Working Papers listed 13 examples, but that example nr 2 was dropped. This is reflected in the list of (12) examples in Attachment 1 of the Supplement to be discussed today.

Spencer/US feels that the practice dismissed by example nr 11 (shipowner’s approval) is simply an issue of time saving. But he welcomed example nr 12 (collection of contributions).

Hahn/Germany gives examples out of his own practice which would fall under example nr 11. With regard to example nr 2 he mentions that lawfirms sometimes ask for copies of all vouchers and contracts, which is not practical at all. To a question from the chairman Hahn/Germany replies that he feels the guidelines are not really necessary.

Harvey/UK/AMD concurs with his colleagues. He too feels that example nr 11 misstates that the adjustment is sent to the shipowner for approval. Example nr 2 should have wording in it like ‘upon request’.
McDonald/UK/AAA feels that most adjusters in the UK would do this. Adjusters do not want to be involved in questions of breach of the contract of carriage (example 6). He wonders how hull underwriters feel about having to put up security for the ship’s contribution (example 3). In general he would be happy with recommendations in guidelines, but not with a general rule in the YAR, as the adjuster is on the receiving end of litigation. But he adds that if cargo is uncertain about the shipowner’s adjuster, cargo can always appoint their own adjuster.

Kubo/Japan(MLA) states that the YAR are part of the contract of carriage by incorporation. The role of the adjuster is outside of this scope and should not be interfered with via the YAR. CMI should not be involved with the way in which adjusters do their job. He is not in favour of guidelines.

Khosla/UK/ICS understands the concerns of the adjusters, and does not want a rule. Possibly guidelines would be ok, but having heard Kubo/Japan(MLA) wonders whether these guidelines are appropriate at all.

Denèfle/France also supports Kubo/Japan(MLA). There should not be a rule in the YAR, but only in the adjuster’s own guidelines. The chairman raises the question whether CMI should make guidelines to be approved by adjusters. Denèfle/France replies that adjusters should make these guidelines themselves. It is an issue to be distinguished from the YAR.

Hahn/Germany adds that adjusters are already regulated by law in Germany and have to operate in a transparent manner.

Browne/UK/IUMI wants to make four points. First, that example 11 simply asks for equal treatment. All documents should be sent to everybody not just to one party. Second, to the question of McDonald/UK/AAA, he replies that he does not know whether hull insurers want to put up security or not. He is not convinced it is a problem, perhaps it is only relevant where the ship might be a creditor in the end. Third, CMI is the custodian of the YAR. The YAR should be interpreted in a consistent manner, so it would be a good idea to give adjusters an idea what to do. Fourth, the Rules of Practice in the UK are fine, but many other countries do not have these Rules of Practice, so guidelines would be good for everybody.

Cornah/UK Adjusters do not want to be arbitrators and the system of adjustments being accepted on the basis of independent professional expertise has generally worked well. However, adjusters do not enjoy the same legal immunity as arbitrators. He is concerned with having a rule in the YAR. Putting things in black and white will lead to (mis)interpretations by courts around the world. Guidelines can already be found in rules of adjusters’ associations or in applicable local law. He is not very much in favour of co-adjusters. It leads to second-guessing, extra costs and time. He particularly addresses IUMI and suggests that they themselves do something about the bad adjusting that they complain about, e.g. having an agreed panel of adjusters. Perhaps something along the lines of example 1 could be looked at,
PART II - THE WORK OF THE CMI

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but IUMI should act themselves too. Cornah/UK then turns to the other examples on the list. Example 2 may be fine, but he fears there is a risk of fishing expeditions. Example 3 may not be appropriate. The adjusters are not collecting security for themselves but on behalf of shipowners and other interests who ultimately decide the form it takes. The cargo can ask the adjuster to arrange for security from the shipowner. He ticks examples 4-7, but puts a question mark over example 8. With respect to example 9 he supports standard security wording. Example 10 reflects current practice in his view. The word ‘legally’ should perhaps be added to ‘properly and reasonably due’. Sending the draft adjustment to the shipowner is an essential part of the process of establishing the facts. Similarly the adjuster agrees on values in advance with cargo representatives, but often there is silence because cargo representatives do not respond (and then come and complain later on). Example 12 may be more difficult in practice. Adjusters cannot go on forever trying to obtain every last contribution – this is not cost effective. He is also not quite sure what is meant by ‘Arrange’.

Browne/UK/IUMI replies to the points raised by Cornah/UK. With regard to the objection raised against a rule for reasons of possible professional liability of the adjuster (example 1) he replies that he thinks this liability to be extremely unlikely. Instead he feels such a rule would actually help adjusters. The earlier wording of a ‘duty of care’ was expressly left out. He points to several wording issues and concludes that the exercise is to assist the adjuster, not to put him into difficulty.

O’Connor/Canada foresees a lot of drafting problems. The examples will need a lot more work in his view. There is also a difficulty with a rule referring to the examples/guidelines. Perhaps they should be an appendix.

Denèfle/France adds that he thinks adjusters are more on the side of the shipowner. The adjuster is often appointed by the shipowner with regard to particular average, but the general average questions usually follow.

Kruit/Netherlands stresses the need for the YAR to be uniformly applied. The role of the adjuster in the new rules of the YAR is extended, so it is more important to make clear that the adjuster should act in the interest of the whole GA community. She feels it is good that the courts could read that the adjuster should be independent.

Pereira/Brazil also makes the point that an adjuster should be impartial. But he feels there is no need for a rule, but guidelines might be ok.

The meeting is then adjourned for a coffee break, and reopened thereafter.

After the coffee break the chairman ponders about the fate of the guidelines concerning the role of the adjuster. He senses that there is not much appetite to include a rule in the YAR. But he does feel that the guidelines
should not be dropped altogether, but that much more work needs to be done on the text. He wonders whether adjusters and parties’ representatives are willing to work on a text in the context of small working group, if need be even with a separate ISC meeting to be called. This is agreed.

SECTION C – GUIDELINES (Working Papers + Attachment 2 in the Supplement)

Cornah/UK gives a recap of the idea behind having Guidelines. The working papers give an indication of the areas that might be covered in the Guidelines.

With the adoption of a Rule XXI providing for Libor + 4% there will be no (more) need for Guidelines on the issue of interest rates (Heading B).

A non-binding but recommended GA security document (Heading D) was still felt to be useful. The document could contain some sort of preamble setting out the procedure. It could be posted on the CMI website to give it a neutral platform.

The Working Papers under Heading G already contain a draft set of Guidelines which are normally sent to GA surveyors.

Posting these Guidelines on the CMI website would be helpful as an information offer. The website could also identify mediation or dispute resolution facilities (Heading G).

The list of Guidelines is not meant to be exhaustive. The Guidelines would perhaps not have teeth, but would still be useful.

The chairman indicates that the Guidelines could be maintained by a CMI Standing Committee.

Hahn/Germany cannot speak for his MLA but is personally supportive.

Spencer/US is positive, and he thinks the MLAUS will probably agree. They would be like the guidelines of the US and Canadian adjusters’ associations that are referred to in contracts of affreightment.

Cornah/UK warns that by including them in B’s/L we may get into trouble with different jurisdictions.

O’Connor/Canada feels the Canadian MLA would look favourably on the idea.

The chairman indicates that it is not clear how CMI will react to this idea. It is not clear whether it falls within the scope of what CMI can do.

Wallrabenstein/Germany thinks the German MLA will probably agree. The Guidelines could fall under a Standing Committee that would have authority to change the Guidelines. He is however hesitant about Guidelines having teeth.

McDonald/UK/AAA states that the AAA supports CMI Guidelines. Because of the risk of mission creep the Guidelines should not be enforceable, however.

Harvey/UK/AMD adds that AMD would also support CMI Guidelines.
and a Standing Committee to update the Guidelines from time to time. He is too is not in favour of making them enforceable.

Browne/UK/IUMI says that IUMI would probably agree, but warns that the Guidelines require a bit of work.

Khosla/UK/ICS says the Guidelines would be fine, but not the Standing Committee as it is not clear what their role is. Perhaps the Standing Committee could just propose changes, but not enact them.

Kim/South Korea thinks Guidelines would be helpful.

The chairman concludes that perhaps a small working group needs to be formed to investigate the matter further.

DRAFTING

The chairman then turns to the issue of amending the draft texts so they reflect the discussion in this ISCGA meeting. Several groups of IWG members are formed with the task of preparing news drafts on the basis of the discussion and to make any other useful recommendations regarding the texts. The meeting is adjourned while the groups prepare new texts and reopened some time later.

Rule B - (Drafting Note 1 in the Working Papers + Attachment 3 in the Supplement)

The group consisting of Cornah/UK, Spencer/US, Sandell/Finland, Browne/UK/IUMI, Harvey/UK/AMD prepared the following draft text:

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 she disconnects from the other vessel or vessels and thereby places herself in safety; if the vessels are in common peril and one is disconnected either to increase the disconnecting vessel’s safety alone or the safety of all vessels in the common maritime adventure the disconnection will be a general average act.

3. Where vessels involved in a common maritime adventure resort to a port or place of refuge allowances under the numbered rules may be in relation to all of the vessels. Allowances in general average shall cease at the time that the common maritime adventure comes to an end.

Harvey/UK/AMD explains the proposal. The proposed text is the same as the text contained in Attachment 3 of the Supplement with the exception of a change in paragraph 3 where ‘(…) allowances under Rules X and XI may be in relation (…)’ has been replaced by ‘(…) allowances under the numbered rules may be in relation (…)’.

O’Connor/Canada spots a typing error in the second line of paragraph 3,
which should read ‘(…) allowances under the numbered rules may be made in relation (…)’. He also suggests to change the ‘numbered rules’ to ‘the Rules’.

Spencer/US replies that ‘these Rules’ would be even better.

The following text is adopted by the meeting:

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 she disconnects from the other vessel or vessels and thereby places herself in safety; if the vessels are in common peril and one is disconnected either to increase the disconnecting vessel’s safety alone or the safety of all vessels in the common maritime adventure the disconnection will be a general average act.

3. Where vessels involved in a common maritime adventure resort to a port or place of refuge allowances under the Rules may be made in relation to all of the vessels. Allowances in general average shall cease at the time that the common maritime adventure comes to an end.

Rule E – (Drafting Note 2 in the Working Papers + Attachment 2 in the Supplement)

The group consisting of Harvey/UK/AMD, Spencer/US, Browne/UK/IUMI, Khosla/UK/ICS, and Hahn/Germany prepared the following draft text:

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

3. Failing such notification, or if any of the parties does not supply particulars in support of a notified claim, or evidence of value in respect of a contributory interest within 12 months of the loss or payment of the expense, 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 shall be communicated to the party in question in writing, and will be binding if not challenged within 2 months of the communication as being manifestly incorrect.

4. Any party to the adventure pursuing a recovery from a third party in respect of sacrifice or expenditure claimed in general average, shall so advise the average adjuster and, in the event that a recovery is achieved, shall supply to the average adjuster full particulars of the recovery within 2 months of receipt of the recovery.

Spencer/US explains the proposal.
Van der Valk/Netherlands wonders whether ‘(…) any of the parties does (…)’ in the first line of paragraph 3 should read ‘(…) any of the parties do (…)’, as the word any is singular.

McDonald/UK/AAA suggests adding ‘as soon as possible’ in paragraph 2.

Spencer/US suggests to keep an open mind.

Light/Turkey thinks the 2 month period in the final lines of paragraph 3 needs clarification. She suggests amending ‘(…) within 2 months of the communication (…)’ to ‘(…) within 2 months after receiving the communication (…)’.

Browne/UK/IUMI wonders in that respect what would happen with communications to the shipowner before issuing the adjustment. Perhaps this is something that should be addressed in the Guidelines.

Cornah/UK adds that paragraph 3 is about the mechanics of fulfilling the obligations set out in paragraph 1 regarding onus of proof.

Browne/UK/IUMI refers to the phrase ‘(…) and will be binding (…)’ in the final lines of paragraph 3. He suggests this should read ‘(…) and it may be binding (…)’ so that it leaves the door open to new information.

Light/Turkey suggests that if of the parties does not supply the information the estimate will be manifestly incorrect.

O’Connor/Canada thinks the words ‘to him’ in (the fifth line of) paragraph 3 are unnecessary. Spencer/US agrees. Khosla/UK/ICS agrees as well, but would like to see the rest of the text unaltered. Pereira/Brazil agrees 100% with the text.

Kruit/Netherlands wonders whether shipowners are considered to be a party within the meaning of the provision (and under the same duty to timely provide particulars).

The chairman wonders what effect ‘binding’ has. Binding to whom?

Cornah/UK suggests to remove the whole text after ‘(…) available (…)’ to get rid over bear traps that would lead to injustice. Harvey/UK/AMD also would like to see the ‘binding’ to go out.

When it is time to break for lunch, the chairman concludes that paragraph 4 seems to have everybody’s approval, but that paragraph 3 may need some more discussion after lunch.

The meeting is then adjourned for lunch, and reopened thereafter.

Rule E – (Drafting Note 2 in the Working Papers + Attachment 2 in the Supplement) (continued)

After further discussion the meeting adopts the following draft text:

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

3. Failing such notification, or if any party does not supply particulars in support of a notified claim, or evidence of value in respect of a contributory interest within 12 months of the loss or payment of the expense, 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. This estimate shall be communicated to the party in question in writing. This estimate may only be challenged within 2 months of receipt of the communication and only on the ground that it is manifestly incorrect.

4. Any party to the adventure pursuing a recovery from a third party in respect of sacrifice or expenditure claimed in general average, shall so advise the average adjuster and, in the event that a recovery is achieved, shall supply to the average adjuster full particulars of the recovery within 2 months of receipt of the recovery.

**Rule VI – Salvage Remuneration – (Drafting Note 5 in the Working Papers + Attachment 2 in the Supplement)**

*Cornah/UK* prepared the following draft text:

(b) Notwithstanding (a) above, where the parties to the adventure have a separate contractual or legal liability, salvage shall only be allowed should any of the following arise:

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

ii) there are significant general average sacrifices involving salved property

iii) salved values are manifestly incorrect and there is a significantly incorrect apportionment of salvage expenses

iv) any of the parties to the salvage have paid a significant proportion of salvage due from other parties

v) not all the parties settled the salvage on substantially similar terms [as to principle (no regard being had to interest on the legal costs of either the salvor or the contributing parties)]

*Cornah/UK* explains the proposal.

*O’Connor/Canada* suggests to add ‘to salvors and have settled that liability’ after ‘(...) contractual or legal liability’ in the heading of the suggested provision.

*Browne/UK/IUMI* refers to subparagraph (v) and suggests to refer to the terms of the ‘gross base award’ or salvage settlement. *Harvey/UK/AMD* wonders what is meant by ‘gross base award’. *Browne/UK/IUMI* explains that this a term of art used in the salvage industry.
Khosla/UK/ICS objects to the words in square brackets in subparagraph (v).

Denèfle/France says that the French MLA (AFDM) does not accept subparagraph (v). It opens up to many discussions, so he wants it to be deleted. Browne/UK/IUMI agrees. IUMI wants (v) out too.

O’Connor/Canada wants to know how ‘substantially similar terms’ would work. The idea appeals to fairness, but what if somebody makes a good deal with salvors, but for a small amount of money, what would happen then? Would everybody have to go through the whole GA process because of this? Browne/UK/IUMI agrees with the idea suggested that a significant proportion of the GA interests should have been involved in this better deal.

Khosla/UK/ICS wants to know what the process will be with regard to the text between square brackets in subparagraph (v). The chairman suggests this will have to be deferred to another meeting.

The meeting adopts the following draft text:

(b) Notwithstanding (a) above, where the parties to the adventure have a separate contractual or legal liability to salvors and have settled that liability salvage shall only be allowed should any of the following arise:

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

ii) there are significant general average sacrifices involving salved property

iii) salved values are manifestly incorrect and there is a significantly incorrect apportionment of salvage expenses

iv) any of the parties to the salvage have paid a significant proportion of salvage due from other parties

v) a significant proportion of the parties settled the salvage on substantially different terms [as to the gross base award or settlement (no regard being had to interest, currency correction or the legal costs of either the salvor or the contributing parties)]

Rule XVII – Contributory Values – (Drafting Note 14 in the Working Papers + Attachment 2 in the Supplement)

Cornah/UK prepared the following draft text:

Any cargo may be excluded from the general average should the average adjuster consider that the cost of including it in the adjustment would be likely to be disproportionate to its eventual contribution.

Cornah/UK explains the proposal.

Kruit/Netherlands suggests to add ‘or apportionment’ after ‘(…) general average’

Denèfle/France again objects to including the text at all, as people may not feel they will need to take out cargo insurance. Cornah/UK repeats his earlier reply that ‘low value cargo’ will not be mentioned in the provision. The
issue is not whether the cargo has a low value, but whether the cost of including it is disproportionate. Denéfle/France however remains unconvinced.

The meeting adopts the draft text without any changes.

Rule XXI – Interest (Drafting Note 21 in the Working Papers + Attachment 2 in the Supplement)

The group consisting of Måkestad/Norway and Van der Valk/Netherlands prepared the following draft text:

a. (as in Working Papers)

b. The rate used for calculating interest accruing during each calendar year is 12 months ICE LIBOR for the currency [in which/of] the adjustment [is prepared] as announced on 1 January of the relevant calendar year, increased by 4%. If the adjustment is prepared in a currency for which no ICE LIBOR rate is announced, the rate used is 12 months [USD/US Dollar] ICE LIBOR.

Van der Valk/Netherlands explains the proposal. The group had had a particular look at the manner in which the Nordic Plan and Cefor arranged the interest issue.

After helpful text suggestions from Spencer/US the meeting adopts the following draft text:

a. (as in Working Papers)

b. The rate for calculating interest accruing during each calendar year shall be the 12 month ICE LIBOR for the currency in which the adjustment is prepared as announced on 1 January of that calendar year, increased by 4%. If the adjustment is prepared in a currency for which no ICE LIBOR rate is announced, the rate shall be the 12 month USD LIBOR.

Rule XXII – Treatment of cash deposits (Drafting Note 22 in the Working Papers + Attachment 2 in the Supplement)

The group consisting of Harvey/UK/AMD and O’Connor/Canada prepared the following draft text:

1) 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, earning interest where possible, in the name of the appointed average adjuster. The adjuster shall issue a deposit receipt in respect of all deposits.

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

3) 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 on account or refunds of
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deposits may only be made when such payments are certified to in writing by the average adjuster and advised to the depositor requesting their approval. Upon the receipt of the depositor’s approval, or in the absence of such approval within a period of 90 days, the average adjuster may deduct the amount of the payment on account or the final contribution from the deposit. Where refunds are due to the depositor, these may only be made upon surrender of the original deposit receipt.

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

Harvey/UK/AMD explains the proposal.

McDonald/UK/AAA asks what will happen if the average adjuster is not able to get true control over the funds, as may happen in certain jurisdictions? The adjuster should not be responsible in such cases. Browne/UK/IUMI wants to know whether an adjuster would provide a receipt in such cases, for instance when the funds are paid into the account of an agent in such jurisdictions.

O’Connor/Canada suggest to remove the word ‘appointed’ before the word ‘adjuster’ in paragraphs 1 and 2.

The meeting adopts the following draft text:

1) Where cash deposits have been collected by the average adjuster 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, earning interest where possible, in the name of the average adjuster. The adjuster shall issue a deposit receipt in respect of all deposits.

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

3) 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 on account or refunds of deposits may only be made when such payments are certified to in writing by the average adjuster and advised to the depositor requesting their approval. Upon the receipt of the depositor’s approval, or in the absence of such approval within a period of 90 days, the average adjuster may deduct the amount of the payment on account or the final contribution from the deposit. Where refunds are due to the depositor, these may only be made upon surrender of the original deposit receipt.

4) All deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.
CMI STANDING COMMITTEE ON GA GUIDELINES

The chairman reports having contacted the CMI President about the idea of setting up a Standing Committee. The CMI President is ok with a Standing Committee, not with authority to alter the Guidelines, but to propose changes to the Guidelines to be adopted by the CMI Executive Committee or by the CMI Assembly.

A discussion follows about what would be a workable committee. The meeting suggests the following persons to be members of the Standing Committee to be established by the CMI Executive Committee:
- Richard Cornah (Chairman)
- Michael Harvey
- John O’Connor
- Jonathan Spencer
- Ben Browne
- Kiran Khosla
- Jiro Kubo
- Sveinung Måkestad

SECTION A - DRAFT RULES (continued)


The Bigham cap remained as a controversial issue about which the stakeholders were unable to reach agreement the previous day.

Cornah/UK explains the issue and the three options. The first is to remove the cap in paragraph 4 completely. The second is to apply the cap to direct allowances under Rules X and XI, and the third is to apply it to Rule X, Rule XI and Rule F allowances. It is recognized that there are different practices followed by adjusters with regard to the second and third options.

The chairman asks whether the rule should simply be removed. Hahn/Germany replies that shipowners have no means to recover the capped costs. He is in favour of removing the rule.

Khosla/UK/ICS refers to the previous papers for all the points raised on behalf of shipowners. The cap does not apply uniformly and operates unfairly, while the reason behind the rule is only one case in a special set of circumstances.

Browne/UK/IUMI disagrees. IUMI wants to keep Rule G including the Bigham cap in the Rules. Prior to 1994, non-separation wording and Bigham clauses were a matter of negotiation and frequent dispute for every case where cargo was forwarded. If paragraph 4 of Rule G was removed this would give rise to legal disputes and increased costs/delay.

The chairman suggests the issue does not have to be decided here. The Bigham cap can be left in the draft for New York, but between square brackets. But the chairman would like a decision on a limited or extended cap. A
discussion follows, but the issue is considered to be so complicated that it is deferred to a later moment. The alternative provisions will be maintained between square brackets.

12) Rule XIV – Temporary repairs (Working Papers + Attachment 2 in the Supplement) (continued)

Cornah/UK explains the issue and refers to the AAA draft.

Browne/UK/IUMI adds that IUMI would support the draft set out in the Working Papers under nr. 12.3.

O’Connor/Canada wonders whether he understands the drafting, particularly subparagraph (2) of paragraph (c). The chairman however asks the meeting to stick to the matter in principle first.

Khosla/UK/ICS feels the 1994 wording should be maintained. She has not been able to discuss the point much. She would like the issue to be discussed further in a separate ISCGA meeting to be held after the ICS meeting in September.

The chairman thanks all those present for the hard work the past days and closes the meeting.
HOW HAVE GENERAL AVERAGE CONCEPTS DEVELOPED ACROSS MARITIME COUNTRIES AND JURISDICTIONS?*

PROF. DR. DIDEM ALGANTÜRK LIGHT**

Abstract
Revisions of the York Antwerp Rules are conducted by CMI International Working Group and the final draft will be presented at the New York Conference of CMI which will be held in May 2016. Revisions of the York Antwerp Rules are conducted by the CMI International Working Group and the final draft will be presented at the New York Conference of CMI, which will be held in May 2016.

The purpose of this study was to evaluate how general average concepts have developed and been implemented across maritime countries and jurisdictions. In addition, the historical record of maritime nations and their regulations was addressed to determine the scope of the legislation by including Turkish law.

Key words, York Antwerp Rules

I. Definition, Historical Back Ground
General average is one of the oldest mechanisms of maritime law, and has been handled, since the middle ages, as a separate subject independent from contracts for carriage of goods by sea and maritime insurance law.

General average means sharing the damages and expenses assumed for the common safety of the vessel and cargo during a voyage in a proportionate manner among the relevant parties of the journey.

General average is based on Rhodian Law, however no written records exist from this era. The first written legal instrument was created with Section II of «De Lege Rhodia de Jactu» of Digesta, Book XIV, dated 533 AD. This document refers to the principle that «the loss to arise from the jettison of

* This paper was presented at Committee Maritime International Colloquium, Istanbul on 6 June 2015.
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cargo for the common safety will be covered by all parties» This principle today mainly relates to the general average rule which is called “jettison of cargo”.

These rules started to be implemented by Roman Law in a unique manner starting with the settlement of Rhodes in the Eastern Mediterranean basin. With the decline of the Roman Empire, the regulations governing general average were shaped by the common law of the maritime area.

The most important compilations related to general average have been, since the 11th century, «The Rolls of Oleron» and “Consolado del Mare”. The rules of Oleron contains three articles governing average:

- Components of general average for jettison of cargo (article 8)
- Cutting away the masts, the mooring cable and anchor for saving cargo (article 9)
- Adjustment of general average for jettison of cargo among merchants (article 35)

In the 1270’s, «Farmannalog», which was a codification of Norse Sea Law, various codes of the Italian Sea Republics, The Laws of Visby which were prevailing in Northern Europe, and the «Garagos Law Book» in Iceland contained provisions related to general average.

Ship and cargo owners seem to have preferred to insure themselves against sea risks, which emerged starting from the 14th century. The major maritime discoveries that started in the 15th century brought the vessel and cargo partnership encountered in the middle ages to an end. In the 16th century, «Gudion de La Mer» which is a book on private law, included the definition of general average. This book was considered a guideline, and also handled other issues of maritime law (e.g., freight, maritime loans, etc.).

The «Ordonnance de la Marine», dated 1681, defines general average in Article 7/2 as it is defined today. These provisions were then incorporated into Napoleon’s Commercial Code. From then on, countries began to issue their maritime laws which included provisions governing general average.

In the UK and the US, unlike Continental Europe, no legal regulations existed governing general average. As the English law and practice, used since the early days, the Rules of Practice of the Association of Average Adjusters were taken into consideration. On the other hand, the Marine Insurance Act of 1906 included the definition of general average in its Article 66/2.

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3 Lowndess/ Rudolf, p. 5; Fahiman Tekil: Türk Hukukunda Müsterek Avarya, Deniz Nakliyatı ev Sigorta Hukuku İhtilafları, İstanbul 1965, p. 22.
“There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made in time of peril for the purpose of preserving the property imperiled in the common adventure.”

The implementation of various national laws governing the rules of general average caused differences between English case law and Continental Europe after the second half of the 19th century. These differences have become an important concern, and initiatives began for integrating the rules of general average in order to resolve the issue in the international arena.5

In 1860, the first 11 rules which were determined in relation to general average, were named “Glasgow Rules” and studies started in 1864 for a project of general average code, but these efforts have not been successful. The rules were revised in 1877 and 1890.6

In 1924, Lettered Rules from A to G which had a nature of general provisions were added, and the rules numbered in roman numerals were amended and expanded in accordance with commercial and technical requirements.

The York-Antwerp Rules, which have been long established, underwent revisions in 1950, 1974, 1990, 1994 and 2004 in line with the changes and developments in the maritime and insurance industries. Revision efforts are still ongoing for the York-Antwerp Rules, which will be discussed in detail today by distinguished lecturers.

II. Implementation of General Average

1. General

York-Antwerp Rules do not have an agreement nature. The Rules can only be recommended to be incorporated to contracts of carriage and bills of lading of the relevant parties. In the international area, York-Antwerp Rules are either incorporated into the national laws;

➢ by means of non-mandatory rules (e.g., French law, Italian law, German law, English law, Dutch law, Egyptian law)

or

➢ by means of reference to these rules with an internal provision. (e.g., Sweden, Belgium, Norway, Denmark, China, Turkey)

The national laws of the US and Canada include scattered provisions on general average and there are no direct enforceable regulations. Thus, the “Rules of practice of average adjusters” introduced aimed to ensure unity.

– Rules Of Practice Of The Association Of Average Adjusters Of The United Kingdom

5 Light, p. 5.
6 Lowndess/ Rudolf, p. 43-45.
2. In Turkish Law and Practice

For the first time in Turkish law, general average was governed by the Commercial Maritime Law dated 1864, which was drawn on the basis of the French Commercial Code of 1807. The Commercial Maritime Law dated 1929, which was produced during the Republican era by the translation of the second book of the German Commercial Code, which deals exclusively with maritime law, contains provisions governing general average.7

The Turkish Commercial Code which took effect in 1957 also contains provisions on general average. All these provisions were drafted on the basis of the York-Antwerp Rules dated 1950.

The New Turkish Commercial Code No. 6102 governs general average in its Articles 1272 to 1285, and provides that the York-Antwerp Rules must be referred to for the purposes of implementation of general average. This can be explained as follows:

Article 1273/1 provides that, unless agreed otherwise by the parties, pro-rata sharing of general average is subject to the most recent York-Antwerp Rules, which was issued by the CMI and which was translated into Turkish on the basis hereof. The translation of York-Antwerp Rules is prepared by an expert committee to be founded by the General Directorate of Insurance and Maritime Undersecretariat, and the translation of the original text is announced and published in the Official Gazette. The amendments to be made to the York-Antwerp Rules by the CMI are also translated into Turkish through the same means, and are published upon sua sponte application by the relevant Undersecretariats or real person and legal entities.

Because of regulation by way of reference, the Turkish Commercial Code does not govern the issue of general average exhaustively. In general, Turkish Commercial Code regulates:

- the definition and components of general average / Rule A
- the damages and losses attributable to general average / Rule C
- substitution costs / Rule F

In addition, the Code also contains provisions governing general average adjustment and its procedure. It is accepted that shipowner is responsible for having the general average adjustment performed.

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7 Ergon Çetingil/Rayegan Kender/ Samim Ünan: Müşterek Avarya Hukuku, İstanbul 2011, p. 16.
If the shipowner fails to fulfill this obligation, any of the concerned parties including the insurer is authorized to request such an adjustment and have it performed. If no consensus is reached between the concerned parties, the adjusters are appointed by the court of jurisdiction where the adjustment will be made.

The adjustment is made at the port of destination, and if the vessel could not arrive at that port, at the port where the journey ended, by one or more than one adjusters to be appointed by the concerned parties unanimously. The general average adjustment report needs to be certified by the court. This is because the adjustment can be implemented only upon a certification decision of the Court. The concerned parties including insurers may request the general average adjustment to be approved, and may also file an objection against the type of general average or calculations. (TCC Art. 1279-1280)

According to TCC article 1275, the creditors indicated in the general average adjustment report have rights:

- maritime liens of the ship,
- right of detention on the goods to be included in the pro-rata sharing of general average,
- right of pledge on the freight against their receivables.

We face the question of which complementary provisions related to general average will be applied in cases where only York-Antwerp Rules have been agreed upon. As, York-Antwerp Rules do not contain any regulation governing the performance and implementation of general average adjustment. These are governed by national laws. In the current practice, it is clearly stated where the adjustment will be made, which law will apply, and the date of the applicable York-Antwerp Rules which will be referred to. For example, a clause “G A in London / York-Antwerp Rules 1994”. In this case, the place where the adjustment will be made will determine the governing law, unless specified otherwise. Thus, the mentioned clause indicates that the general average will be implemented in London, that the adjustment will be subject to the English law and to the 1994 text.

III. Interpretation

The first paragraph of the “Rule of Interpretation” which is the first Rule of the York-Antwerp Rules, needs to be examined first in order to determine how general average is adjusted.

“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 of Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules.

The purpose of the first paragraph of the Rules of Interpretation is to ensure a unity in the implementation of York-Antwerp Rules in the
international arena. York-Antwerp Rules, which were incorporated into the agreement as a condition, prevail over national non-mandatory rules and practice, also known as general average adjustment reports.

Therefore, unity will be ensured in the international arena only if York-Antwerp Rules are implemented regardless of the national rules of law and/or practices in the jurisdiction where the general average is adjusted.

With the introduction of the Rule of Paramount into York-Antwerp Rules in 1994, the order of priority for implementation of the York-Antwerp Rules is as follows: *Rule of Interpretation – Rule Paramount, Numbered Rules, Lettered Rules.* Therefore, in case of inconsistency between a Numbered Rule and a Lettered Rule, Numbered Rules shall prevail over Lettered Rules pursuant to the Rule of Interpretation.

As a matter of fact, this conclusion may be based on the fact that principles of general average apply to particular special cases in order to ensure unity in practice, with the Numbered Rules not affected by the inconsistencies among the national law systems and practices.

The Numbered Rules provide general average losses, damages and expenditures, such as:

- Rule I: Jettison of cargo
- Rule II: Loss or damage by sacrifices for the common safety
- Rule III: Extinguishing fire on shipboard
- Rule IV: Cutting away wreck
- Rule V: Voluntary stranding
- Rule VI: Salvage
- Rule VII: Machinery and boiler damage
- Rule VIII: Expenses lightening A ship when A shore and consequential damage
- Rule IX: Use of cargo, ship’s materials and stores for fuel
- Rule X: Expenses at port of refuge
- Rule XI: Wages and maintenance of crew and other port of refuge expenses
- Rule XII: Damage to cargo in discharging
- Rule XIII: Deductions from cost of repairs
- Rule XIV: Temporary repairs
- Rule XV: Rule XXII are regarding general average adjustments
- Rule XV: Lost of freight
- Rule XVI: Amount to be made good for cargo lost or damaged by sacrifice
- Rule XVII: Contributory values
- Rule XVIII: Damage to ship

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Rule XIX: Undeclared or wrongfully declared cargo  
Rule XX: Provision of funds  
Rule XXI: Interest on losses made good in general average  
Rule XXII: Treatment of cash deposits

IV. Elements of General Average

Rule A includes a definition of general average which also sets forth its elements.

Rule A

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

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

According to this definition, the components of general average are:

1. Extraordinary sacrifice or expenditure:

For the presence of general average act, it is not sufficient that the sacrifice is made for the purpose of preserving from peril the property involved in a common maritime adventure, but also the loss or expenditure that has arisen must have an extraordinary nature.9

The term “extraordinary sacrifice” referred to in the text must mean sacrificing the property. For example, jettison of cargo, or the loss incurred by the machines during the attempts to refloat the ship which is ashore, is an extraordinary sacrifice. “Extraordinary expenditure” is the expenditure incurred for avoiding common peril. The losses and damages which are the natural burden of voyage may not be accepted as general average10. For example, costs of hiring a trailer for towing a vessel when ashore or costs of refuge are extraordinary expenditure.

2. Common Safety:

Another condition sought for accepting expenditure or losses as general average is that extraordinary sacrifice should have been made for the purpose of preserving from a common peril the property involved in a common maritime adventure. In other words, sacrifice should have been made for the common safety. This is the key factor which differentiates general average from particular average.

With the concept of common safety, the rule requires only the physical

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10 Lowndes/Rudolf, p. 119; Tekil, p. 183
salvation of the property for the purpose of preserving the property from peril, and does not require the voyage to be successfully completed\(^\text{11}\). In the case of total loss of the vessel and cargo before the voyage is over, no contributory value for general average shall be paid.

3. **Peril.**

The peril doesn’t have to be of a severity level which will have an impact immediately or which will cause the total loss of the vessel or cargo\(^\text{12}\). It is sufficient that the peril be actual and of a nature which may cause severe damage to the vessel and cargo\(^\text{13}\).

An example for this concept is the *The American Farmer\(^\text{14}\)* case where the captain of the vessel, which was damaged in the middle of the Atlantic Ocean as a result of collision, asked for help from the coast guard to be delivered by air. When aid was delivered, it was seen that the vessel had been saved by two other vessels. The court decided that not only the Coast Guard but also the other two vessels were entitled to receive salvage remuneration for their salvage effort.

In the US, when identifying the severity level of a peril for determining whether there is a general average act, the existence of peril such as; threatening peril, threatening and seemingly unavoidable peril, an imminent peril, threatening imminent peril, a peril close to physical damage, an imminent peril threatening the whole are sought in practice\(^\text{15}\). However, regardless of the severity of the peril, Rule A requires only the physical salvation of the property for the purpose of preserving the property from peril and does not require the voyage to be successfully completed. Even if there is no peril, if the captain is reasonably of the opinion that there is, then it is accepted that there is a peril involved\(^\text{16}\).

The conditions of peril and common safety should co-exist. If the act was committed specifically for the purpose of common safety while encountering peril, then there is a general average act. The peril must be of a common nature threatening the vessel and the cargo. In other words, sacrifice or expenditure made for avoiding the peril threatening only the vessel or the cargo is not


\(^{12}\) Buglass, p. 219.

\(^{13}\) Tetley, p. 21.


\(^{15}\) Buglass, p. 206.

\(^{16}\) However, *The Joseph Watson v. Fireman Fund Insurance Co. of San Francisco* case, smoke came from a locker where resins shipped from New York to Hull by sea were stored, and water was sprayed there to avoid any potential fire hazard. In addition, steam was pumped into the locker and the cargo was damaged significantly. When the vessel arrived at the port of Hull, no signs of fire were discovered. The court decided that damages had arisen because a peril was assumed to exist, which did not actually exist, and that thus there could not be a general average act, *The Joseph Watson v. Fireman Fund Insurance Co. of San Francisco* (1922), 2 KB. 355.
accepted as general average. However, there are some exceptions to this in practice. For example, there are some cases from US courts which stipulate that general average rules may apply also when the insured ship is in ballast condition or without any contract of affreightment.

4) **Safe Prosecution, peril**

Also, in Rule X(b) and XI(b), where there is no “peril” requirement for the claims which are made for general average expenses at the port of discharge conditions, safe prosecution has replaced “peril”. As Buglass and Tetley expressed, this is general average “by agreement” or “artificial general average”.

5) **Voluntary – Intentional and reasonable:**

The general average act must be intentionally and reasonably committed for the common safety for the purpose of preserving the property from peril.

At this point, the captain must make a decision about taking measures at his/her own discretion, the consequences of which may be anticipated by the captain, in order to save the vessel and cargo from the peril involved. The captain may consult either the ship owner or the insurer before making such a decision. This decision is still accepted to be captain’s own decision on behalf of the cargo and vessel’s joint interests. Thus, the decision of the captain for a general average act will be binding also for the owners of the cargo. (e.g., intentional jettison of cargo for the purpose of preserving from peril).

This act, which is committed intentionally, must not only cause sacrifice, but must also preserve the property from an existing peril.

The sacrifice made intentionally must also be reasonable. What is meant by “**REASONABLE**” is that a taken measure must be the most appropriate measure to be taken for saving the vessel and cargo from peril, in other words for avoiding the damage in full or in part.

Reasonableness of the general average act preferred and implemented is measured according to the particular facts of each case. The condition of being reasonable is governed not only by Rule A, but also by the Rule Paramount. Thus, the sacrifice and expenditure made, which are not reasonable, may not be allowed as general average pursuant to the Numbered Rules. In this case, the Rule Paramount provides that the condition of being reasonable must be sought in all cases for the decision made for the general average act.

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17 Tetley, p. 16.
20 Buglass, p. 198; Tetley, p. 25.
21 Çetingil/ Kender/Ünan, p. 43.
22 *Athel Line Ltd. v. Liverpool and London War Risks Ins. Assn. Ltd (1944); “The Seapoll”* (1934) P. 53, Lowndes/Rudolf, p. 120.
V. Conclusion:

The first 11 rules which were determined in relation to general average, were named Glasgow Rules in 1860 and have been long established, underwent revisions in 1950, 1974, 1990, 1994 and 2004 in line with the changes and developments in the maritime and insurance industry.

Despite more than a decade to pass through last revisions of the York Antwerp Rules in Vancouver, the draft couldn’t be put into practice. Therefore, CMI International Working Group (IWG) on general average was decided to revise the Rules and to prepare a framework that will meet the needs of the ship owners, cargo owners and insurers. Revisions of the Rules are still in progress on the base of 1994 and 2004 texts. The final draft will be submitted to the New York Conference of CMI which will be held in May 2016.

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OFFSHORE ACTIVITIES

Position paper of the Iberoamerican Institute of Maritime Law in relation to the need of an international convention on the Offshore extractive activity promoted, by the IMO
ANY OTHER BUSINESS

Position paper of the Iberoamerican Institute of Maritime Law in relation to the need of an international convention on the Offshore extractive activity promoted by the IMO.

Submitted by IIDM

SUMMARY

**Executive summary:** It is proposed the development of an International Convention on the Offshore extractive activity promoted by the IMO.

**Strategic direction:** 1; 7.2; 13.

**High-level action:** 7.2.2; 13.0.2

**Planned output:** None.

**Action to be taken:** Paragraph 46.

**Related documents:** None.

I.-Introduction

1 The present paper was prepared by Mr. Jorge Radovich, member of IIDM and also Executive Counsellor of the CMI. The paper was submitted to the IIDM’s Coordinator of International Organizations Committee, Ms. Fabiana Martins, and to the President of the IIDM, Mr. Luiz Roberto Leven Siano, who approved it to be sent as a paper to the 102nd session of the Legal Committee.

2 On October 22nd 2012 at the Comité Maritime International¹ Conference held at Beijing, China, the constitution of an International Working Group to analyze the convenience

¹ The Comité Maritime International, formally established in 1897, is the most antique non governmental and nonprofit organization devoted to maritime legislation. It is believed that a group of Belgian professionals and businessmen proposed to the International Law Association approximately in 1880 to prepare a uniform maritime code, which was the Comite’s formal birth seed in Antwerp. It gathers not only lawyers but all people interested in navigation, it has national associations in several countries. Its central objective is the uniformity of Maritime Law, and it had an important activity in the discussion and approval of International Conventions before IMO appearance. Conventions of that
to elaborate an International Convention on hydrocarbons Offshore extractive activity was unanimously decided².

3 The exploration and exploitation of Offshore hydrocarbons is not a new phenomena, but it does is every time operations are undertaken in more profound waters, which entails a substantial increment of the risks in accordance with technical reports. Up to date, there is no international instrument covering and guaranteeing liability arising from the activity.

4 The extraction of hydrocarbons from the seabed does not involvulate only the so known as Offshore Platforms –where fixed or mobile- but a whole group of exploration and detection vessels and devices. For instance, those that collocate submarine pipelines, others called Floating Production Storage and Offloading (FPSO) that receive the hydrocarbon and process it on board, which in the past were tank vessels which had been disposed of their machinery that was replaced by the necessary elements for processing the hydrocarbon; and a whole universe of tug boats specialized in the service and maintenance of these structures.

5 We have to bear in mind that an important group of people lives and works on board of the Platforms. These people shall be transported, hosted, provided with food, medicine, entertainment, their dispositions shall be treated. The platforms shall be equipped with elements, spare parts and materials, etc. Frequently platforms have facilities for the landing of helicopters, but the majority of the services are rendered by specialized tugboats. Those tugboats are called “Supply Vessels” and there are several types adapted to specific activities, among which we can mention the AHTS, whose mission is to lay and handle the anchor fields which maintain in their site and protect mobile Platforms.

II.-Attempts of international regulation

6 The international community did not remain impassible before the risks generated by this industry; we may cite several unsuccessful regulation attempts. In the first place, we will mention the Convention known by its acronym in English as CLEE (Convention on Civil Liability for Oil Pollution Damage Resulting from Exploration and Exploitation of Seabed Mineral Resources) done in London in 1976, which characterizes for contemplating alternative limited and unlimited liability systems. This convention has never entered into force.

7 In 1977, in the Conference held in Rio de Janeiro the CMI prepared a draft of the Convention on “Offshore Mobile Crafts”³. It was not studied by the Intergovernmental Consultative Maritime Organization, antecedent of current IMO⁴.

² Even the Norwegian delegate, after stating that the regulation of offshore activity corresponded to the State granting the license, and remarking that the Petroleum Act establishes objective and unlimited liability of operators, and that it subjects them to very stringent security, and prevention and environmental damage evaluation standards, agreed that the topic shall be studied since that situation did not take place in several countries, therefore even Norway may accept the treatment of offshore activity at IMO.


⁴ IMO is a United Nations specialized agency devoted to issues related to international maritime navigation. Its two principal objectives are maritime security and prevention of pollution of the marine
Several States claim exclusive jurisdiction and incumbency to regulate extractive activity in their respective Continental Shelf or Economic Exclusive Zones, because they consider it directly linked to their sovereignty, which may explain the failure of international organisms to approve a convention of universal scope until now. In Latin America, this position has been defended vigorously by Brazil and Argentina, and might be shared by other nations of the area.

Furthermore, it has been said that IMO does not have incumbency in relation to the regulation of offshore hydrocarbons extractive activity due to the fact that its object concentrates in the maritime services of international transport carried out by vessels exclusively.

Not worrying for polluting third parties or the marine environment is by no means an acceptable and sociable valuable behaviour.

We believe that these extreme positions are linked to political, ideological and state sovereignty aspects which –paradoxically- conserve great influence in the decisions adopted at IMO, displacing modern considerations of environmental character.

However, in 1979 and afterwards in 1989 IMO adopted the so called MODU Code, which practical effect consists in extending the application of the Conventions on Load Lines and SOLAS to drilling mobile platforms, although they were originally designed exclusively for vessels. Moreover, OPRC Conventions on preparation, response and cooperation in respect to incidents of pollution by hydrocarbons and hazardous and noxious substances include expressly fixed or mobile offshore platforms.

In 1994 the CMI updated the 1977 draft in the Conference held in Sidney, Australia. This draft was neither accepted by IMO Legal Committee.

In 2001 the Canadian Association of Maritime Law drafted a very complete project, which includes from property, registration, privileges, mortgages, civil and penal jurisdiction to salvage, pollution and liability for leakage aspects.

Among extractive industry regional agreements we may mention the so called OPOL, which establishes objective, several and limited liability to USD 250 millions per event guaranteed by all the operators of the area. It applies to the North of Europe, excluding the Baltic. This agreement is not an international convention, but an agreement among industry operators.

There are a series of regional conventions related to the protection of the marine environment which do not refer specifically to the extractive offshore hydrocarbons industry, among those we can cite:

International Convention for the Safety of Human Life at Sea, 1974 (SOLAS/74), amended text.

17 The River Plate Treaty and its Maritime Front, 1973 signed by Argentine and Uruguay Republics, which defines pollution in Chapter IX and establishes that the parties shall adopt the preventive measures established in international conventions and those recommended by the international technical organisms and that they are responsible for the pollution generated to the other party. It establishes even an area of prohibition of pollutant activities. This convention has undoubtedly been pioneer in the topic. However, neither a liability system nor the rights of the people affected by a pollutant event are concretely established. The extractive offshore industry is not expressly mentioned.

18 The 1981 Abidjan Convention –and its 1985 Protocol– for cooperation in the protection and development of the marine and coastal environment in Central and Occidental Africa focus centrally in technical aspects and do not contain regulations regarding liability and compensations, although States are encouraged to enact intern regulation in this respect.

19 The so called 1992 OSPAR Convention for the protection of the marine environment of the Northeast Atlantic, neither regulates liability and compensation issues, but Section 3 and Annex III refer specifically to pollution originated by offshore industry.

20 The Protocol for the Protection of the Mediterranean Sea against Pollution resulting from Exploration and Exploitation of the Continental Platform and its Subsoil was adopted in October 1994 and is the first international instrument totally devoted to our subject of study.

21 It establishes exigent security and building standards and the duty to evaluate environmental impact. It contemplates a regimen of authorization and licenses and the duty to have a contingency plan. It states that liability for pollution corresponds to the operator and is mandatorily insurable. Removal of installations is regulated as well as the revocation of licenses in cases of noncompliances. Transboundary pollution is expressly prohibited.

22 Nonetheless, this Protocol has only entered into force in 2011 as a consequence of the incidents that we mention in the following chapter and has received scarce ratifications.
Moreover, we have been informed of another regional agreement in the Arabic Gulf, but we do not have precisions.

We consider that there are very few regional agreements, only one contemplates our topic specifically and there is no uniformed regime of liability and compensation.

IV.- Two great disasters and its influence on IMO

The contrary attitude towards the elaboration of an International Convention by some States and OMI was affected by two important and recent disasters at sea. The first one is duly known, but the second one has passed unnoticed although its legal importance since it has implied transboundary pollution. The renowned case is the one concerning the DEEPWATER HORIZON Platform, which in April 2010 exploited and was fired in Mexico Gulf, in front of Luisiana State causing eleven deaths and a colossal spill that lasted 87 days since it could be obturated. The Platform operated in waters of approximately 1,500 meters deep and drilled at 2,700 meters, at 66 kilometers from Louisiana coast.

The Platform sank on April 22nd, 2010. It is estimated that the oil spill comprised between 700 and 780 millions of liters, and seriously affected the littoral of four North America States- Louisiana, Mississippi, Florida and Alabama, and also the Mexican coast.

As it was exploited by British Petroleum, this company had economic solvency to respond to claims, although it had not assured the Platform. Self-insurance is a reality extended in the industry. Nonetheless, it was reported that judicial claims submitted by Mexican people still remain unsolved by the US Justice.

The less known disaster is the MONTARA one- in 2009 a Platform operated by a Thailand Petroleum company was drilling that well when an explosion took place and great amounts of oil were liberated. It was installed in Australia Economic Exclusive Zone, but it did not affect this State, it affected Indonesia. MONTARA was located in waters of approximately 77 deep meters and drilled at 2,500 meters deep. It leaked during 74 days affecting Indonesia coast and not being an operator of first level as in the precedent case, the claims were not satisfactorily paid to the victims until recently.

This case evidenced the lack of a Convention establishing a Fund to face this type of transboundary pollution claims, or of sufficient compulsory insurance that assures the quick and correct indemnification of those prejudiced by a leakage caused by the extractive industry.

In 2012 Indonesia stated the issue before the IMO Security Committee. It was told to direct it to the Legal Committee because of incumbency questions. When the topic was treated at the Legal Committee, it faced opposing positions. Indonesia maintains that an international instrument regulating the issue shall be enacted.

Indonesia even organized a Conference in Bali in 2011 searching for an advance towards an International Convention guaranteeing compensation for transboundary pollution.

12 As Justice Rares informed to the IWG during its meeting during the Dublin Symposium.
13 “Conference on Liability and Compensation Regime for Transboundary Oil Damage resulting from Offshore hydrocarbon exploration and extraction”. A complete report in English might be seen in CMI Newsletters N° 3, 2011.
In the centesimal session of IMO Legal Committee, held in London from April 15th to 19th, 2013, the topic was analyzed—among others—and the following conclusions were reached:

- There is not an imperative necessity to prepare an international treaty on offshore activity;
- The objective shall be to assist States to reach bilateral or regional agreements creating workshops or consultative groups;
- There is no necessity that IMO involves directly, which may delay bilateral or regional agreements;
- The States which have ratified bilateral or regional agreements should offer assistance to those which want to reach the same objective;
- Principles established in document Leg 100/13/2 should be considered, which reflects regulations of CLC and Fund 1992 and Bunkers Conventions;
- Regarding environmental issues, Sections 192, 194 and 197 UNCLOS shall be taken into account.

Indonesia insisted in the following session of the IMO Legal Committee, but the Committee insisted with the position commented above.

In the Symposium organized by the Irish Association of Maritime Law held in Dublin in September, 2013, Dr. Rosalie Balkin, IMO Director of Legal Affairs and External Relations Division who had continuous actuation in the Legal Committee, explained the position adopted by the organization.

She explained that the regulation of offshore activity is not part of IMO aims, which arises from its constitutive Convention. In effect, the instrument starts establishing the objective of the organization in the following terms:

"Article 1
The objectives of the Organization are:
a) to establish a system of collaboration among Governments regarding the regulation and governmental practices of technical issues of every aspect concerning commercial international navigation, and promote the general adoption of rules to reach the highest possible levels referring maritime security and efficiency in navigation;..."

It is real that the instrument centers in commercial international navigation and in prevention and compensation of pollution from vessels, and that there is no mention whatsoever to exploitation of offshore hydrocarbons. But it shall be taken into account that it dates from 1948, time when that activity was at an early stage in development and that nowadays an ecologist and conservationist conscious exist which was not present when the instrument was adopted.

This interpretation is in our opinion, contradictory with the central objectives that IMO states on its web page and that are stated on its own logo—which consists in improving maritime security and promoting clean seas—especially in what refers to pollution by...
hydrocarbons. We believe that permitting the proliferation of offshore artifacts and its auxiliary and service vessels without exigent standards does not precisely promotes safety in navigation, and that the lack of an international regimen of prevention, contention and cleanliness of hydrocarbons leakages caused by offshore artifacts does not help seas to be cleaner.

Moreover, the adoption of the MODU Code by IMO –mentioned in Chapter II- also appears to be contradictory with such construction of IMO constitutive Convention. Also the SUA antiterrorism Convention applies to the Offshore crafts.

Frankly, after analyzing legal issues relating to the definition of vessels in international conventions, Dr. Balkin concluded that is not an strictly legal problem, but that it relates to a political issue- States do not want to resign their sovereignty over Continental Shelves and Economic Exclusive Zones and resist to subscribe an international convention relative to Offshore activity, which they understand may limit the jurisdictional powers over those areas.

V. The topic at the academic and social level

In the XVII Congress of the Ibero-American Institute of Maritime Law, held in Rio de Janeiro in November of 2012, a whole morning was devoted to hydrocarbons exploitation of the Economic Exclusive Zone –an ingenious mention was made to the “Blue Amazon”- and in the Continental Shelf. This shows the transcendence of the issue for our nations.

The Argentine Branch of the Ibero-American Institute of Maritime Law also organized a Seminar on June 5th and 6th, 2013 which included the treatment of the issue, and the same was done by the Argentine and Uruguay Association of Maritime Law on June 27th and 28th 2013, in the River Plate Seminar of Maritime Law. The Oriental Republic of Uruguay is seriously and professionally preparing in the process of regulating the granting of their first license of gas and hydrocarbons exploration and exploitation which may be found in their Economic Exclusive Zone and continental platform, neighbor to Brazil whose richness in the topic is widespread known.

Moreover, the issue has been discussed in the Symposium of the Irish Association of Maritime Law which was sponsored by the CMI, in October of 2013, with a very qualified panel, which captured the attention of the attending parties.

And the same happens with the Congress of our Ibero-American Institute of Maritime Law jointly organized with the American Association of Maritime Law, in Puerto Rico, in November of 2013, and in Lisbon in 2014.

The IWG on Offshore Activities of the CMI is preparing a Seminar on the issue that will be carried out in Istanbul in June of 2015.

Two important reports on the issue were published. In February an IDDRI Study entitled “Seeing beyond the horizon of deepwater oil and gas: strengthening the international regulation of offshore exploration and exploitation”. This document contains a comprehensive review of existing international, multilateral and bilateral agreements on the regulation of offshore activities. In addition the European Commission has published a Report prepared by Maastricht University entitled “Civil Liability and Financial Security for Offshore Oil and Gas Activities”. This report suggests that governments should encourage “risk pooling” between members of the drilling industry to create a broad based industry funded compensation scheme.
46 The IMO could contribute with all its experience with the successful CLC and Funds Conventions related to oil pollution originated in tanker vessels to establish an international convention covering the pollution produced by the Offshore industry.

47 The European Commission has also released a report prepared by Bio by Deloitte entitled “Civil liability, financial security and compensation claims for offshore oil and gas activities in the European Economic Area.” This report concludes that in all EU states there is no existing liability regime for third party claims for traditional damage caused by pollution from offshore activities, no regime for handling compensation payments and no assurance that operators would have adequate financial assets to meet such claims.17

48 This shows the absolute actuality of the issue among the maritime academics, and we consider that the concern of the eventual victims and conservationist organizations is increasing in this respect.

49 Although it has no direct link to the issue under analysis, because it does not concern pollution events, the strong reaction caused by the earthquakes in Castellón de la Plana cost, in Spain, attributed by the public to Castor Project, demonstrate that people are increasingly concern of the alterations to the environment which may cause gas and hydrocarbons explosions.

VI. Final comments

50 Does the decision of OMI Legal Committee close the doors to the work of an international convention regulating the topic?

51 We do not believe so. Bilateral or regional agreements may have standards, exigencies and levels of compensation very different, which goes against uniformity desired in issues related to Maritime Law and Sea Law –if they are considered autonomous– and Environmental Law.

52 Or they may directly fail to exist, leaving some areas without coverage against transboundary pollution originated in offshore extractive activity. As we have stated in Chapter III, they are scarce, except for one they do not comprise in an integral way the topic and a uniform system of liability and compensation cannot be extracted from them.

53 The CMI established an International Working Group (hereinafter IWG) on Offshore Activities, whose Chairman is the recognized author Patrick Griggs and the Rapporteur our Member Jorge M. Radovich. The IWG will evaluate in a first stage the existence, scope and requirements of the bilateral or regional agreements more rigorously and seriously than we have done in our preliminary study of Chapter III. And it will prepare, at we have stated, a license model.

54 Nonetheless, we believe that the repetition of a lack of rapid and effective compensation after a transboundary pollution event as the one suffered by Indonesia may not be admitted.

55 William Sharpe, a Canadian colleague and member of the CMI IWG participated in the IDDRI workshop in 2012 and its lecture supports the necessity of an international convention regulating uniformly the subject. This is also supported by Wilye Spicer –also Canadian and member of the CMI IWG-in an excellent article devoted to offshore exploitation in the Arctic.

17 Patrick Griggs’ Report to the CMI Executive Committee virtual meeting on November, 2014.
56 As regards the Arctic ecosystem, due to its fragility and the absence of a convention protecting the pretensions of the States and the oil and gas companies – different from what happens in the Antarctic – we believe that it is essential that an international treaty be promoted in this effect.

57 The same happens in relation to hydrocarbons exploitation in the seabed not submitted to sovereignty of any State.

58 Therefore, there exist as much practical requirements as institutional and academic opinions that encourage working in the design of an international convention which unifies the regulation of the extractive offshore industry, consequently this activity may and shall be faced in the IMO, whose recognized expertise in the fight against the pollution of the seas will be of utmost importance.
# NEW YORK CONFERENCE

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CROSS BORDER INSOLVENCIES

Cross-border insolvency and admiralty: a middle path of reciprocal comity
by Martin Davies

A report of the work of the IWG
by Christopher Davis
CROSS-BORDER INSOLVENCY AND ADMARLITY: A MIDDLE PATH OF RECIPROCAL COMITY

MARTIN DAVIES*

1. Introduction

When a shipowner becomes insolvent, or when it appears that it soon may be so, creditors often move to arrest its ships or attach its other assets wherever in the world they can be found, using admiralty procedures designed to protect the interests of local claimants. When this occurs, a familiar conflict arises, between insolvency law and admiralty law. Admiralty law would allow the creditor to proceed against the shipowner’s assets where they were seized, notwithstanding the existence of insolvency proceedings in the debtor’s home country. Indeed, one of the principal purposes of the traditional admiralty procedures is to allow local creditors to get satisfaction of their claims, notwithstanding the insolvency of a distant foreign shipowner. In contrast, in insolvency law, the “golden thread” of universalism calls for courts in other countries to cooperate with the courts in the country of the debtor’s insolvency to ensure that all of its assets are distributed to its creditors under a single, orderly, system of distribution.1 If the debtor’s assets have been seized by admiralty judicial process in another country, the principle of universalism calls for them to be released, and for the admiralty creditors to participate in the debtor’s insolvency proceedings.

At first sight, the underlying imperatives of these two bodies of law appear to be irreconcilable. It seems that one or other must prevail at the expense of the other. If admiralty prevails, the admiralty proceedings in the country of arrest or attachment will proceed as usual, notwithstanding the existence of insolvency proceedings in the debtor’s home country.2 If

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1 Re HIH Casualty & General Insurance Ltd [2008] 1 W.L.R. 852, 861-62, per Lord Hoffmann.

2 See, e.g., Holt Cargo Systems Inc. v. ABC Containerline N.V. [2001] 3 S.C.R. 90 (admiralty proceedings in Canada allowed to proceed, notwithstanding the existence of insolvency proceedings in Belgium).
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insolvency prevails, the admiralty proceedings must be discontinued so as to ensure all creditors participate equally in the insolvency proceedings.\(^3\) Predictably, maritime lawyers prefer the first alternative: this is, after all, why admiralty procedures have existed for hundreds of years. Equally predictably, insolvency lawyers prefer the second alternative: to them, the right to proceed against the debtor’s assets in admiralty amounts to little more than an illegitimate form of preference. This appears to be a zero sum game: whichever body of law wins, someone will regard the outcome as illegitimate or inappropriate.

The goal of this article is to suggest a third way, a middle path that achieves the main goal of universalism, recognizing the primacy of the insolvency proceedings, while also preserving the right of admiralty claimants to secure their claims by proceeding against the debtor’s assets wherever they may be found. This middle path depends upon the notion of reciprocal comity, by which each country – that of the admiralty arrest or attachment and that of the insolvency proceedings – respects the legitimacy of the other’s proceedings and laws.\(^4\) Respect should be mutual. If respect is not reciprocated, it is no more than enforced acquiescence or self-abnegation.

The UNCITRAL Model Law on Cross-Border Insolvency\(^5\) implements the concept of universalism by requiring enacting countries to stay any proceedings against a debtor upon recognition of the existence of insolvency proceedings in the debtor’s centre of main interests (COMI).\(^6\) The E.U.’s Insolvency Regulation\(^7\) (soon to be the Recast Insolvency Regulation)\(^8\) implements a modified form of universalism, giving primacy to insolvency proceedings in the debtor’s COMI and the law of the country where they are opened (the \textit{lex concursus}), but preserving pre-existing rights \textit{in rem} granted by the laws of other E.U. member states.\(^9\) The most basic notions of comity demand that a country where the debtor’s assets have been arrested or attached using admiralty procedures must recognize the primacy of insolvency proceedings in the debtor’s COMI. Reciprocal comity demands that the country of the insolvency proceedings recognize and respect the legitimacy of the security granted by the admiralty procedures in the country of arrest or attachment.


\(^5\) \textit{UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation} (UNCITRAL Secretariat, 2014).

\(^6\) Model Law, Art. 20.

\(^7\) Council Regulation (E.C.) 1346/2000 on insolvency proceedings.

\(^8\) Regulation (E.U.) 2015/848 of the European Parliament and Council of 20 May 2015 on insolvency proceedings (recast), which will take effect on 26 June 2017.

\(^9\) Insolvency Regulation, Arts 4, 5; Recast Insolvency Regulation, Arts 7, 8.
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Both the Model Law and the Insolvency Regulation can accommodate a reciprocal comity approach of the kind recommended here. This article explains how, focusing mainly on the Model Law, which, although not yet widely adopted, has been enacted in several important maritime jurisdictions, including Australia, Canada, Greece, Japan, Korea, South Africa, the U.K., and the United States.\(^\text{10}\)

The appropriate relationship between the law of the country of arrest or attachment and the law of the opening of insolvency proceedings depends in part upon the order in which proceedings are commenced. The next section of this article explores the different possible permutations.

2. Three permutations

One of the most troublesome aspects of the relationship between cross-border insolvency and admiralty proceedings is the fact that the nature of that relationship changes according to the order in which the various proceedings are brought. This is true not only as a matter of priority and precedence, but also, as a practical matter, in relation to the assets of the debtor themselves. In particular, the extent of the debtor’s insurance cover for pre-existing liabilities will depend upon the order in which proceedings are brought.

There are three significant moments in the kind of case under consideration here: the commencement of admiralty arrest or attachment proceedings (A); the opening of insolvency proceedings in the debtor’s COMI (I); and recognition of the insolvency proceedings as a foreign main proceeding (FMP) in a country that has enacted the Model Law (R). These three events can occur in three possible sequences: A-I-R, I-R-A, and I-A-R.\(^\text{11}\)

The three permutations raise different implications about the relationship of reciprocal comity between the country of arrest/attachment and the country of the FMP. As a practical consequence, it follows that there cannot be a single, “one size fits all” solution to the legal issues raised in these cases. The appropriate international solution must depend upon the sequence of events.

(a) A-I-R: admiralty proceedings before insolvency proceedings

This permutation is the one that most pointedly raises the supposed competition between insolvency and admiralty. Admiralty claimants may have proceeded against the debtor’s vessel(s) before its insolvency either because


\(^{11}\) There are six possible combinations of the three variables A, I and R: AIR, ARI, IRA, IAR, RIA, RAI. Because recognition of an FMP cannot possibly precede the opening of insolvency proceedings in the COMI, R cannot precede I, which removes the theoretical combinations ARI, RIA and RAI.
they have learned of the possibility of an impending insolvency or in the ordinary course of things, unaware of the possibility that the operator of the vessel(s) against which they are proceeding is in sufficiently dire straits that it may soon be forced into insolvency in its COMI. The admiralty claimant’s knowledge or intention is largely irrelevant, of course. All that matters for present purposes is that the admiralty claimant has proceeded to enforce what admiralty law regards as a secured claim before insolvency proceedings were opened. Should the subsequent opening of insolvency proceedings bring an end to the pre-existing admiralty proceedings, thereby quite possibly extinguishing the security that those admiralty proceedings give to the claimants, forcing them to participate in the foreign insolvency? Or should the admiralty claimants’ “first strike” against one of the main assets of the debtor be allowed to stand, possibly giving them what amounts to a preference over other creditors?

The UNCITRAL Model Law deliberately left that question up to enacting states, thereby eschewing the possibility of an internationally uniform answer. Article 20(2) of the Model Law modifies the effect of the mandatory stay called for by Art. 20(1) by providing:

The scope, and the modification or termination, of the stay and suspension referred to in paragraph 1 of the present article are subject to [refer to any provisions of law of the enacting State relating to insolvency that apply to exceptions, limitations, modifications or termination in respect of the stay and suspension referred to in paragraph 1 of the present article].

UNCITRAL’s “Guide to Enactment and Interpretation” states that the purpose of Art. 20(2) is to limit the effect of the mandatory Art. 20(1) stay by reference to any exceptions or limitations that may exist under the law of the enacting country, such as local laws allowing the continuation of pre-existing claims by secured creditors. The Guide to Enactment says that an insolvent debtor enjoying the benefit of Art. 20 must accept the imposition of restrictions by the enacting country, even if they are different, and possibly more stringent, than they would be under the law of the FMP. That is consistent with a reciprocal comity approach, because it requires both the enacting country (the country of arrest/attachment) and the country of the FMP to acknowledge and respect the laws of the other. The country of arrest/attachment must respect the existence of the FMP in another country by staying the existing proceedings

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in its courts, but the country of the FMP (and the debtor invoking insolvency protection) must respect the fact that the country of arrest/attachment may choose to preserve the priority of claims secured before the insolvency proceedings were opened.

Article 20(2) means that a country enacting the Model Law could provide that the mandatory Art. 20(1) stay does not apply to a pre-existing action by any secured claimant, 14 including one who has proceeded in admiralty to seize a ship by arrest or attachment. Predictably, different countries that have enacted the Model Law have “filled in the blank” in Art. 20(2) in different ways. Although some enacting countries have provisions allowing secured claimants to continue to proceed against an individual debtor’s assets notwithstanding a subsequent bankruptcy filing, 15 some, such as Japan 16 and (perhaps) South Africa, 17 make exactly the opposite provision in relation to corporate debtors, providing no “safe harbor” for pre-existing claims by secured creditors but forcing all of them to participate in the subsequently-declared insolvency. The United Kingdom provides that a pre-existing admiralty claimant is not subject to the Art. 20(1) stay if a claim involving a corporate defendant has been “completed,” meaning that there has been a judicial seizure and sale before the insolvency proceedings are opened. 18 The result of such a provision is that the admiralty claimant can continue to proceed against the proceeds of a judicial sale notwithstanding the opening of insolvency proceedings, but if the admiralty proceedings have not reached the point of judicial sale when insolvency proceedings are opened, the claimant cannot continue to proceed in admiralty but must participate in the insolvency proceedings. Some enacting countries, such as New Zealand and Kenya, have “filled in the blank” in Art.

15 See, e.g., Insolvency Act 1986 (U.K.), s 285(4).
16 Act of Recognition of and Assistance for Foreign Insolvency Proceedings (No. 129 of 2000), Arts. 27-29.
17 Cross-Border Insolvency Act 2000 (S.A.), s. 20(2) makes the mandatory Art. 20(1) stay subject to the requirements imposed by Companies Act 1973 (S.A.), s. 359, which suspended all pre-existing proceedings against a company once a winding-up order was made unless prompt notice was given to the liquidator. However, Companies Act 1973 (S.A.) was repealed by Companies Act 2008 (S.A.) without consequential amendment of Cross-Border Insolvency Act 2000 (S.A.), s. 20(2), which leaves the position unclear.
18 Cross-Border Insolvency Regulations 2006 (U.K.), Art. 20(3)(a) provides that “in the case of a debtor other than an individual,” the Art. 20(1) stay does not affect any right “to take any steps to enforce security over the debtor’s property” if that right would have been exercisable against the debtor company if it had been the subject of a winding-up order under the Insolvency Act 1986 (U.K.). Insolvency Act 1986 (U.K.), s. 183(1) provides that where a creditor has issued execution against the goods of a company and that company is subsequently wound up, the claimant cannot retain the benefit of the execution unless it has been “completed” before commencement of the winding up, which means (s. 183(3)(a)) “completed by seizure and sale.” (The Cross-Border Insolvency Regulations 2006 (U.K.) were made by the Lord Chancellor and the Scottish Ministers pursuant to powers conferred by the Insolvency Act 2000 (U.K.), s. 14.)
20(2) by giving the court an open-ended discretion to order, upon application by any creditor (including, presumably, a pre-existing admiralty claimant), that the Art. 20(1) stay should not apply upon any conditions that the court thinks fit. Australia and Canada have adopted (or apparently adopted) an interesting intermediate position, which does not exempt pre-existing secured claims from the mandatory Art. 20(1) stay if the insolvent debtor is in administration, but allows them to continue if the insolvent company is in liquidation. This would mean that the proceedings would be stayed if the insolvency proceedings in the FMP were to be some form of rehabilitation, so that the corporate debtor still had some prospect of surviving its insolvency and so still needed “breathing space,” but not if the company were in liquidation without any prospect of survival.

The United States did not “fill in the blank” in Art. 20(2) at all, perhaps because it did not enact Art. 20 in the form suggested by the Model Law. Chapter 15 of the Bankruptcy Code contains no provision modifying the effect of the mandatory stay upon recognition of an FMP. Indeed, far from referring to a local provision preserving the effect of pre-existing proceedings in relation to secured claims, the Chapter 15 provision mandating a stay upon recognition of an FMP cross-refers to a local provision that specifically applies the mandatory stay to (among other things) “any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of [the insolvency proceedings].” Thus, the United States is to be grouped with Japan and (perhaps) South Africa, as a country providing no “safe harbor” for pre-existing claims by secured creditors.

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19 See, e.g., Insolvency (Cross-Border) Act 2006 (N.Z.), Sch. 1, Art. 20(2); Insolvency Act 2015 (Ken.), s. 720, Sch. 5, para. 22(2)
20 Corporations Act 2001 (Cth), s. 440B provides that secured parties cannot enforce their secured claims while the company is in administration; Corporations Act 2001 (Cth), s. 471C provides that the mandatory stay of proceedings under s. 471B when a company is being wound up in insolvency does not affect a secured creditor’s right to realize or otherwise deal with its security interest.
21 Companies’ Creditors Arrangement Act 1985 (Can.), s. 11.02(1)(a); Bankruptcy and Insolvency Act 1985 (Can.), s. 271(3) make the stay subject to the exceptions that would apply in Canadian domestic proceedings. Bankruptcy and Insolvency Act 1985 (Can.), ss. 69(2)(a), 69.1(2), 69.3(2) allow proceedings by secured creditors to continue; Federal Business Development Bank v. Quebec [1988] 1 S.C.R. 1061.
24 See above, notes 21 to 17.
However the enacting country “fills in the blank” in Art. 20(2), it is important in the A-I-R permutation to determine which pre-existing admiralty claims count as secured claims, and which do not. It seems beyond doubt that maritime lien claims should be regarded as secured claims. The traditional view of an action to enforce a maritime lien is that it is the perfection of an inchoate right that the claimant has over the liened vessel from the moment the claim arises. The process is often described as “foreclosure,” which highlights the idea that the claimant has a kind of property right or charge over the liened ship, analogous to a mortgage or hypothec. Common law countries disagree about what kinds of claim, and how many, give rise to a maritime lien, but they do not disagree about the secured effect of such claims when they do arise. More difficult is the question whether a non-lien claim enforced by the admiralty procedure of arrest or attachment constitutes a secured claim for these purposes. Admiralty claims that can be enforced in rem by arrest of a ship are sometimes described as being secured by a “statutory lien,” because they are conferred by statute and not by the general maritime law, although the claimant’s “lien” attaches only at the time of commencement of proceedings in rem and not at the time the claim arose, as a maritime lien does. There is English authority for the proposition that a statutory right to proceed in rem does make the claimant a secured creditor for purposes of subsequently-opened insolvency proceedings. Recent cases in Australia also support the proposition that an admiralty claimant who has proceeded in rem is a secured claimant for purposes of subsequently-opened insolvency proceedings. Thus, in those enacting countries that have “filled in the blank” in Art. 20(2) by allowing pre-existing secured claims to continue, notwithstanding recognition of an FMP, both maritime lien and “statutory lien” claims should not be subject to the mandatory Art. 20(1) stay.

If the country of arrest or attachment does not make an exception to the mandatory stay for pre-existing secured claims, it must stay any admiralty proceedings (with the possible exception of claims based upon maritime liens, 25. Harmer v. Bell (The Bold Buccleugh) (1851) 7 Moo.P.C. 267, 284; 13 Eng.Rep. 884, 890.
26. In The Nestor, 18 F.Cas. 9, 13 (C.C.D. Me. 1831), Justice Joseph Story described the effect of a maritime lien as a “tacit hypothecation.”
a point that is considered in further detail below in the context of I-R-A) and release any security that has been given in relation to the admiralty claim. Unfortunately, that is likely to have the net effect of making all claimants worse off. If the admiralty proceedings predate the insolvency and recognition (i.e., if A comes before I and R), the security is likely to take the form of an undertaking by a P. & I. Club given in consideration of the claimant either releasing the ship in question from arrest or refraining from arresting it.31 Typically, the P. & I. Club letter of undertaking takes the form of an agreement between the Club and the claimant, and so it cannot be regarded as an asset of the insolvent debtor shipowner that could be entrusted to the foreign representative under Art. 21(1)(e) of the Model Law.32 Although the Club’s undertaking to satisfy claims is obviously an asset in one sense, it is not a fungible, transferable asset that can be realized by anyone other than the admiralty claimant. If the (former) admiralty claimant participates in the FMP after the admiralty proceedings in the country of arrest/attachment have been stayed, it increases the number of claims against the insolvent debtor without any corresponding increase in the assets available to satisfy those claims. The admiralty claimant is worse off because it loses the security it previously had for payment of its claim, and the other creditors are worse off because their likely recovery is diminished by the participation of another creditor claiming against the assets of the insolvent debtor. The Club could not be forced to increase the assets of the insolvent debtor in the FMP by transferring its undertaking to satisfy any claims, because that undertaking is given to prevent arrest or attachment of the debtor’s ship to enforce a particular claim, something that can no longer occur.33

That being so, it would be unwise for a liquidator/administrator/trustee in bankruptcy to seek release of a previously-given Club letter of undertaking when applying for recognition of the debtor’s insolvency proceedings as an FMP. Recognition should preclude subsequent action against the debtor’s assets by admiralty claimants (that would be the I-R-A permutation, considered below), but it should have no impact on pre-existing admiralty claims secured by a letter of undertaking.

31 The ship’s P. & I. Club would not give the usual undertaking if the shipowner is in any kind of insolvency proceedings at the time of the admiralty claimant’s arrest or attachment: see the consideration of I-R-A and I-A-R below.
33 In any event, Club rules typically contain an “ipso facto” termination of cover in the event of the shipowner’s insolvency: see below.
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(b) I-R-A: insolvency and recognition proceedings before admiralty proceedings

At first sight, this permutation seems to have the most obvious solution. Any admiralty claimant who arrests or attaches a ship after an order recognizing the FMP has already been made seems clearly to be acting in contravention of the court’s recognition order. That is plainly true, with the possible exception of maritime lien claims, which are regarded as being claims against the personified ship itself, rather than claims against the shipowner.

The significance of that distinction was considered at some length by Buchanan J. of the Federal Court of Australia in Yu v. STX Pan Ocean Co Ltd (South Korea), 34 who held that a stay of proceedings under Art. 20(1) of the Model Law should not preclude a claimant from subsequently bringing an action in rem to enforce a maritime lien. Yu held that because a maritime lien creditor has a secured interest against the ship itself dating from the moment of the event from which the lien arose, rather than merely an in personam right against the ship’s owner, the Art. 20(1) stay should not apply to a maritime lien claim, which should be allowed to proceed against the ship. 35 Accordingly, the Yu court held that when an Art. 20(1) stay has been ordered upon recognition of an FMP, any warrant for arrest of a ship owned or chartered by the foreign debtor should be considered by a judge of the court, rather than by the Admiralty Registrar, so that the judge can determine whether the interest sought to be vindicated by the action in rem is a maritime lien. 36 Orders of this kind have routinely been made since Yu when recognizing FMPs of ship operators. 37

The same maritime lien issue arose, but was not decided, in the United States in In re Daewoo Logistics Corp., 38 in which a stevedoring company made a Rule C arrest of a ship chartered, but not owned, by a time charterer (Daewoo) that was in rehabilitation proceedings in its COMI, Korea. The stevedoring company’s claim was based on an allegation that it had a maritime lien over the ship for necessaries provided to the ship in the United States. The

35 Cross-Border Insolvency Act 2008 (Cth), s. 16 provides that for purposes of Art. 20(2), the Art. 20(1) stay is subject to the operation of the Corporations Act 2001 (Cth), Chapter 5, which includes s. 471C. Similarly, Art. 20(4) provides that the Art. 20(1) stay does not affect the right to request commencement of a proceeding under stipulated local laws, left blank in the Model Law itself. Section 16 does not, in its terms, apply s. 471C to Art. 20(4) as well as Art. 20(2), as Buchanan J. in Yu held that it does (see 223 F.C.R. 189, 202-3, [41]), but that appears to be a drafting omission, as the corresponding “blank” in Art. 20(4) would otherwise be left blank.
36 Yu, (2013) 223 F.C.R. 189, 203, [48], per Buchanan J.
ship was released from arrest upon the giving of substitute security. Before
the arrest occurred, the U.S. Bankruptcy Court for the Southern District of
New York had recognized the Korean rehabilitation proceedings as an FMP,
and the insolvent debtor (the time charterer) moved for an order holding the
admiralty claimant in violation of the recognition order. The Bankruptcy Court
held that the mandatory stays imposed as part of the recognition order
terminated at the close of the foreign debtor’s rehabilitation, which had
occurred before the arrest. That rendered the Yu-like question moot, as there
were other reasons for concluding that the arresting admiralty claimant had not
violated the recognition order, and should be allowed to proceed to enforce
its maritime lien. Nevertheless, the Daewoo facts provide a nice illustration of
one aspect of the relationship between recognition of an FMP and a maritime
lien claim. The Yu order that has become commonplace in Australia refers to
ships “owned or chartered” by the foreign debtor in a recognised FMP. An
enthusiastic supporter of the doctrine of personification would gladly accept
the proposition that the personified ship is not the same legal person as its
owner in insolvency proceedings in its COMI, but even a personification
sceptic might find it acceptable to allow a maritime lien claim to continue
against a ship chartered, but not owned, by the foreign debtor. The plaintiff in
Daewoo asserted a maritime lien over a ship that was not one of the foreign
debtor’s assets. There is no obvious reason why such a claim should be
paralysed because of the existence of insolvency proceedings involving a time
charterer, which has only the commercial disposition of the chartered ship,
without any possessory right to it.

In contrast, in In re Daebo International Shipping Co. Ltd, a stevedoring
company and other creditors made Rule B attachments of a ship “leased” by
a foreign debtor whose Korean rehabilitation proceedings had been recognized
as an FMP by the U.S. Bankruptcy Court for the Southern District of New
York. The “lease” was not a typical demise charterparty, but a sale-and-
leaseback arrangement that the foreign debtor had previously entered into with
one of its creditors as a means of repaying a debt owed to that creditor. Thus,
there were two key differences from the Daewoo proceedings just described:
(1) it was at least arguable that the ship was one of the foreign debtor’s assets; and
(2) the admiralty process of seizure was not a purported foreclosure of a
maritime lien under Rule C, but attachment of property under Rule B pursuant
to an in personam claim against the foreign debtor. The Bankruptcy Court

39 I confess to being an enthusiastic supporter myself: see Martin Davies, “In defense of
41 Ibid., at 50.
42 The ship was listed as one of the foreign debtor’s “tangible assets” in the Korean
rehabilitation proceedings: see In re Daebo, 543 B.R. at 50. The claimants argued, without success,
that the “lease” was a sham transaction designed to defraud creditors.
quite properly vacated the Rule B attachments, holding that if the ship was one of the foreign debtor’s assets, the recognition order precluded seizure of it, and if the ship was not one of the foreign debtor’s assets, it could not be attached as property of the defendant under Rule B.

The contrast between *Daewoo* and *Daebo* throws a peculiarly American light on the *Yu* distinction, helping to illustrate where it is controversial and where not. If the foreign debtor is only time charterer of the ships in “its” fleet, then the order recognizing the FMP in the I-R-A permutation should not preclude arrest or attachment of any ships in that fleet, which are clearly not assets of the foreign debtor, which had only the commercial disposition of the ships in question. If the foreign debtor actually owns the ships arrested after the recognition order, the court’s response should depend upon the court’s attitude to maritime liens and the doctrine of personification, which means that in most countries, the ship should be released from arrest/attachment after a recognition order has been made.

Even from the point of view of a personification sceptic, there seem to be sound reasons for allowing arrest proceedings pursuant to a true maritime lien to continue. All common law countries agree that a maritime lien survives sale of the liened ship, other than a judicial sale. If the foreign debtor were to buy a ship subject to maritime liens as a result of the previous owner’s debts, those pre-existing maritime lien claimants could still proceed against the ship in question. This buttresses the view that, although the ship can quite properly be regarded from one point of view simply as one of the assets of the foreign debtor to be dealt with in the insolvency, it is not absurd to regard it as an independent legal person capable of satisfying its own debts, which may or may not be the same as those of its owner.

(c) I-A-R: admiralty proceedings during insolvency proceedings

In practice, this may perhaps be the most common permutation. Once admiralty creditors learn of insolvency proceedings opened by the insolvent shipowner debtor in its home COMI, they are usually not slow to proceed in admiralty wherever they can find assets belonging to the foreign debtor, in an attempt to secure their claims without needing to participate in the foreign insolvency. Admiralty claimants in countries that have enacted the Model Law must try to act before an order recognizing the shipowner-debtor’s insolvency proceedings as an FMP has been made, in order to try to stay ahead of the game, and to get their secured (or arguably secured) claims into court before any prospect of the mandatory Art. 20(1) stay being made upon recognition of the FMP – in other words, before they are in I-R-A territory.

If an admiralty claimant arrests or attaches a ship after its owner has opened insolvency proceedings in its COMI, there is every prospect that the arrest or attachment will actually take place, without being pre-empted by the provision of security by the ship’s P. & I. Club (or other liability insurer). This
is a key difference from the A-I-R situation, in which the shipowner’s P. & I. Club can be expected to give security for the admiralty claims, given that the shipowner remains solvent at the time when the claims are brought. I-A-R is different. P. & I. Club Rules typically provide that the opening of insolvency proceedings by the shipowner, even rehabilitation proceedings, automatically terminates the shipowner’s cover under the mutual insurance scheme that is the essence of such associations. Such provisions are often called “cesser” clauses, although (obviously) they differ from the cesser clauses that typically appear in voyage charterparties; in some countries they are referred to as “ipso facto” clauses because they purport to take effect automatically upon the shipowner’s insolvency (or possibly even before). Rule 29 of the U.K. Club Rules is typical of this kind of provision:

(A) An Owner shall forthwith cease to be insured by the Association in respect of any and all ships entered by him or on his behalf upon the happening of any of the following events:

ii. Where the Owner is a corporation, a) upon the passing of any resolution for its voluntary winding up (other than voluntary winding up for the purposes of company or group reorganisation), b) upon an order being made for its compulsory winding up, c) upon its dissolution, d) upon a receiver or manager being appointed of all or part of its business or undertaking, e) upon its commencing proceedings under any bankruptcy or insolvency laws to seek protection from its creditors or to reorganise its affairs.

The country of arrest or attachment may or may not recognize the “ipso facto” effect of the Club’s purportedly automatic cancellation of the insurance cover provided to a now-insolvent shipowner. Some countries, such as, for example, the U.K., accept that “cesser” clauses of this kind are effective, on the basis that the insurer has the ability to stipulate the terms upon which it will provide cover. In *Belmont Park Investments Pty Ltd v. BNY Corporate Trustee Services Ltd*, the U.K. Supreme Court held that the venerable English “anti-deprivation rule,” which strikes down any provision in a contract vesting

43 The reason for such a provision is that any doubt about the shipowner’s insolvency calls into question its ability to act as a co-insurer, as well as an assured, which is a fundamental aspect of the mutuality concept that underlies P. & I. insurance.


property of a debtor in someone else in the event of the debtor’s bankruptcy, does not automatically invalidate provisions in executory contracts that take effect upon insolvency. In *Re Pan Ocean Co. Ltd*, it was accepted by both parties that an “ipso facto” termination of a long-term contract of affreightment upon the event of the shipowner’s insolvency was valid under English law, the governing law of the contract, notwithstanding the fact that it would have been invalid under Korean law, the law of the shipowner’s insolvency. Morgan, J. in *Pan Ocean* explained as follows why that outcome was consistent with *Belmont Park*:

The contractual provisions which were under review in [*Belmont Park*] were triggered by the relevant company filing for Chapter 11 protection in the US Bankruptcy Court. Judge Peck sitting in the U.S. Bankruptcy Court for the Southern District of New York made a declaration that the contractual provisions in question were ineffective because they were in breach of the U.S. Bankruptcy Code: see *Re Lehman Bros Holdings Inc.*, 422 B.R. 407. Nonetheless, the contractual provisions were governed by English law and the English courts held that they were effective under English law.

In the light of such cases, it seems clear that the “ipso facto” effect of “cesser” clauses in P. & I. Club Rules would most probably be regarded as valid and effective as a matter of English law, even if they were to be regarded as ineffective by the law of the bankrupt shipowner’s COMI.

Other countries, such as the United States, regard the “ipso facto” effect of clauses of this kind as invalid, as the *Pan Ocean* court’s reference to the *Lehman Brothers* case makes clear. In *In re Probulk, Inc.*, the U.S. Bankruptcy Court for the Southern District of New York held emphatically that “ipso facto” clauses in P. & I. Club Rules were rendered invalid by the U.S. Bankruptcy Code, with the result that the insurance rights of insolvent shipowners continued after their petition for bankruptcy, notwithstanding the provisions of the Club Rules. The court said:

The Clubs’ argument … rests on a so-called ‘cesser’ clause in their contracts, providing that insurance automatically terminates in the event that a member of the Club (the insured) passes ‘a resolution for a

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48 Ibid. at [17].
51 Ibid. at 60-61.
voluntary winding up.’ They claim that this clause results in a termination of coverage even before a bankruptcy or insolvency filing, apparently recognizing (without conceding) that the U.S. Bankruptcy Code may invalidate certain forfeitures that result from the act of filing a petition under Title 11. The Bankruptcy Code is not so easily evaded. There is no question that in the circumstances at bar their insurance rights constituted property of the debtors … Section 541(c)(1)(B) of the Bankruptcy Code provides, with exceptions not applicable here, that an interest of the debtor in property becomes property of the estate notwithstanding any provision in an agreement … or applicable nonbankruptcy law … that is conditioned on the insolvency or financial condition of the debtor…There is thus no question that the debtors’ insurance rights continued notwithstanding the Clubs’ attempt to deem them terminated as a consequence of the resolutions of the boards of directors of the debtors authorizing a bankruptcy filing and the prospective appointment of a trustee or custodian.

If the country of arrest or attachment takes the same view as the United States, the P. & I. Club may be restrained by court order from cancelling coverage, and ordered to provide security according to the terms of the ship’s entry with the Club. That is what happened in *In re Probulk, Inc*. If that does occur, the situation will be the same as under A-I-R, as the security given by the Club is “property of the debtor” only in the country of arrest or attachment, and cannot be transferred to the FMP. For that reason, it would be in all creditors’ interest for their representative to pursue enforcement of the insurance contract in the country of arrest or attachment, rather than trying to repatriate all assets to the FMP, as the A-I-R situation shows.

Among common law countries, the only other countries that expressly nullify ipso facto clauses are: Barbados, Canada and New Zealand (in limited cases). Among civil law countries, ipso facto clauses are nullified (at least in some cases) in: Belgium, Finland, France, Norway, Poland, Portugal, Sweden, and Spain.

On the other hand, if the country of arrest or attachment acknowledges the “ipso facto” effect of the Club’s cancellation of cover immediately upon the shipowner’s opening of the insolvency proceedings or even before, as the U.K. does, it is likely that the ship will actually be seized pursuant to judicial process in the country where the admiralty claimants proceed, unless the insolvent shipowner can somehow find some other security (such as a bond or bank

54 Ibid.
guarantee) to offer to avert the judicial seizure. In those circumstances, the country where the ship has been seized must decide whether to release the ship once the recognition order is made, or to allow the admiralty claims to proceed on the basis that they are secured claims that were made before the order recognizing the FMP was made. As we have already seen in relation to the A-I-R permutation, some countries allow pre-existing secured claims to survive the recognition of an FMP under the Model Law, but others do not.

Thus, the I-A-R permutation would produce a “race to the courthouse” in those countries allowing pre-existing secured claims to continue, notwithstanding recognition of the FMP. Once insolvency proceedings are opened, creditors would be encouraged (if they needed any encouragement) to secure their claims by arrest or attachment wherever they found one of the debtor’s ships. Conversely, the foreign representative might move quickly to seek recognition pre-emptively in as many Model Law countries as possible, so as to put the proceedings into I-R-A mode rather than I-A-R mode. Some Model Law countries, such as Japan, have made legislative provision to deal with that possibility, providing that if there are insolvency proceedings that may constitute an FMP and recognition proceedings are pending, any judicial seizure may be put on hold until the recognition occurs.55 That approach may even be taken where there is no specific statutory authorization to do so, on grounds of judicial economy. For example, in *Evridiki Navigation Inc. v. Sanko S.S. Co.*, 56 the U.S. District Court for the District of Maryland ordered release of a ship that had been seized by admiralty claimants even before the making of an order recognizing the shipowner’s insolvency proceedings as an FMP, because “it appears inevitable that those claims [i.e., the admiralty claims] will never be adjudicated in this Court.”57

If the admiralty claimant wins the “race to the courthouse” by arresting or attaching the debtor’s ship before an order recognizing a foreign FMP has been made, and if that claim is allowed to continue, notwithstanding the later recognition order, the country of arrest/attachment would retain custody of the ship, at least initially. In those circumstances, it might well be best for the court in the arresting country to exercise its discretion under the Model Law, Art. 21(1)(e), to entrust the seized ship to the foreign representative so that it can be treated as an asset for the benefit of all creditors, not merely those who seized it by judicial process. Article 21(2) provides that such an order can only be made where it is “in the interest of the creditors” to do so. Here, “the

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55 Act of Recognition of and Assistance for Foreign Insolvency Proceedings (No. 129 of 2000), art. 25(2)(“Where a petition for recognition of foreign insolvency proceedings is filed, the court may issue a stay order under the provisions of the preceding paragraph even before issuing an order on the petition.”)
57 Id., at 674.
“creditors” appears to mean local creditors, not all creditors. Although the Guide to Enactment of the UNCITRAL Model Law says that Art. 21(2) is designed to protect “local interests,” meaning the interests of “local creditors,” it also says, in relation to Art. 22, that it is not advisable to take only the interests of local creditors into account when considering the exercise of discretionary relief under Art. 21. Thus, for example, the U.S. enactment of Art. 21 requires the court to be satisfied that “the interests of creditors in the United States are sufficiently protected,” but the U.S. enactment of Art. 22 provides that discretionary relief under Art. 21 may be given “only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.” In S.N.P. Boat Service, S.A. v. Hotel le Saint James, the U.S. Bankruptcy Court for the Southern District of Florida harmonized these different emphases in the following way (emphases in the original):

Thus, according to the Model Law, a bankruptcy court must be satisfied that local creditors’ interests are “sufficiently protected” before allowing a foreign representative to distribute property in a foreign proceeding, and though not an express requirement, is not precluded from satisfying itself that foreign creditors’ interests are “sufficiently protected” before allowing a foreign representative to distribute property in a foreign proceeding.

This interpretation points in the direction of a “reciprocal comity” solution, taking into account the interests of both the country of arrest/attachment and the country of the FMP. The most obvious way in which the country of arrest/attachment can satisfy itself that the interests of local creditors are protected is to take steps to ensure that the FMP country should continue to recognize the secured status of the pre-existing admiralty claims given by the arresting/attaching country after the asset has been entrusted to the creditors’ representative.

For example, in In re Atlas Shipping A/S, a Danish shipowner was declared bankrupt by a court in Denmark, the shipowner’s COMI. Several creditors then used the admiralty procedure of Rule B attachment in the United States to attach funds of the Danish shipowner in New York banks. The case thus stood in the I-A-R posture, because the plaintiff’s seizure of the debtor’s funds in New York occurred before recognition of the Danish bankruptcy

58 UNCITRAL Guide to Enactment, supra note 12, para. 192.
59 Ibid, para. 198.
60 11 U.S.C. § 1521(b).
proceedings as an FMP. After the U.S. Bankruptcy Court for the Southern District of New York recognized the Danish proceedings as an FMP under Chapter 15 of the U.S. Bankruptcy Code (the enactment of the UNCITRAL Model Law), the Danish foreign representative asked for an order vacating the Rule B attachments and entrusting the attached funds to her under the U.S. enactment of Art. 21 of the Model Law, so that she could remove those funds from the United States and make them subject to administration by the bankruptcy court in Denmark. The court turned the funds over to the Danish foreign representative, noting:

The foreign representative acknowledged ... that if the relief is granted, it is without prejudice to creditors’ rights, if any, to assert in the Danish bankruptcy court their rights to the previously garnished funds. This is sufficient protection to the creditors here.

The court acknowledged, however, that: “It will then be up to the [Danish] court to determine what benefit, if any, [these creditors] should enjoy from having obtained” the Rule B attachments in the United States.

Reciprocal comity would require the country of the FMP to grant the admiralty claimants the same secured status in the bankruptcy proceedings that they obtained in the country of arrest/attachment. The country of arrest/attachment would act with comity by respecting the primacy of the insolvency proceedings (the FMP) in the country of the debtor’s COMI, but the country of the FMP would respect the secured status legitimately conferred by the admiralty law of the country of arrest/attachment.

In order for the FMP country were to take that view, at least in relation to maritime liens, it would have to take the position that the conferral of maritime liens is a matter of substance, not procedure, so that recognition of foreign maritime liens is governed by the lex causae, not the lex fori. That is the position taken in Canada, Germany (at least in cases not entirely within the EU), Australia, and, possibly, China. If, however, the FMP forum

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68 Ibid, at 747.
70 Einführungsgesetz zum Bürgerlichen Gesetzbuche (EGBGB), Art. 45(2).
72 Law of the People’s Republic of China on the Laws Applicable to Foreign-related Civil Relations (2010), Art. 37 provides that in the absence of any choice by the parties, rights in rem in movable property are governed by “the law of the place where the property is located when the legal fact occurs,” which would be the law of the place of arrest or attachment, it seems.
regards security as a matter of procedure to be determined by the *lex fori*, as does the U.K., Singapore, and Croatia the arresting country should not release the property to the foreign representative without an undertaking by that representative to give the admiralty claimant the same secured status as it would have if the admiralty proceedings were allowed to continue in the country of arrest/attachment.

Even if the country of the FMP recognizes maritime liens from other countries as substantive rights giving the claimants secured status in the insolvency proceedings, it must make a further determination about whether to give those secured claims the same priority that they would enjoy under the law of the arrest/attachment. As a practical matter, it seems unavoidable to conclude that matters of priority, as opposed to recognition of secured status, must be determined by the *lex fori* of the FMP. To give foreign secured claims the same priority that they enjoy under the law that confers their secured status might lead to insoluble conundrums, if each of several recognized *leges causae* gives a different priority to secured claims of particular kinds. Reciprocal comity requires the country of the FMP to recognize the legitimacy of the secured status conferred upon the admiralty claims by the law of the country of arrest/attachment. It does not, and arguably cannot, require the country of the FMP to give the same priority among secured claims that the country of arrest/attachment would do.

When both the country of the FMP and the country of arrest/attachment are within the E.U., the applicable law is dictated by the Insolvency Regulation (and, with effect from 26 June 2017, the Recast Insolvency Regulation), which provide that the law applicable to insolvency proceedings is the law of the country where the proceedings were opened (the *lex concursus*), except in the case of rights *in rem*, which are not affected by the opening of insolvency proceedings, and so are governed by the law of the country conferring them (the *lex causae*). The English text of Article 5(2) of the Regulation (Art. 8(2) of the Recast Regulation) provides that rights *in rem*:

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73 Bankers Trust International Ltd v. Todd Shipyards Corp (The Halcyon Isle) [1981] A.C. 221.
75 Reply of the Croatian Maritime Law Association to the Comité Maritime International’s International Working Group on Cross-Border Insolvency Questionnaire, Question 15.
79 Insolvency Regulation, Art. 4; Recast Insolvency Regulation, Art. 7.
80 Insolvency Regulation, Art. 5; Recast Insolvency Regulation, Art. 8.
[S]hall, in particular, mean:
(a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
(c) the right to demand assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
(d) a right *in rem* to the beneficial use of assets.

Article 5(2)/8(2) has different shades of meaning in the 23 other official languages, with the result that it is difficult to be certain whether a claim pursued by arrest or attachment can constitute a right *in rem* for purposes of the Regulation.\(^81\) Thus, there may even be some doubt about whether a claim secured by a maritime lien is a right *in rem* for purposes of Art. 5(2)/8(2).\(^82\) It seems unlikely, however, that arrest or attachment of a ship to secure non-lien claims will be regarded as a right *in rem* for these purposes, and so such claims will fall to be determined by the *lex concursus* in the FMP, depriving the admiralty claimants of any priority they might have obtained by arresting or attaching the debtor’s ship before insolvency proceedings were opened.\(^83\) If that is the case, the “reciprocal comity” approach advocated here has no prospect of success in relation to cases entirely within the European Union.

3. **Conclusion**

Comity should not be a one-way street. If the courts of the country of arrest/attachment defer to the superior jurisdictional claims of the court of the FMP, they should be entitled to expect the reciprocal degree of respect that the court of the FMP should recognize claims of security legitimately granted by that country’s laws. In the A-I-R permutation, the country of arrest/attachment must respect the existence of the FMP in another country by staying the existing proceedings in its courts, but the country of the FMP (and the debtor invoking insolvency protection) must respect the fact that the country of arrest/attachment may choose to preserve the priority of claims

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\(^82\) Ibid.

\(^83\) Ibid.
secured before the insolvency proceedings were opened. In the I-R-A permutation, if the country of arrest/attachment recognizes maritime liens as effective against the arrested ship (or other property) itself, the country of the FMP should respect that fact, even when the country of arrest/attachment stays its own proceedings to require claimants to participate in the insolvency in the FMP. In the I-A-R permutation, the courts of the country of arrest/attachment should concede primacy to the courts of the FMP, but should be entitled to demand, in return, that those courts grant reciprocal respect to the secured status granted by arrest or attachment in the country where admiralty proceedings were brought. The middle way of reciprocal comity requires mutual respect, not enforced acquiescence or self-abnegation on the part of either country.
REPORT ON THE WORK OF THE
INTERNATIONAL WORKING GROUP ON
CROSS-BORDER INSOLVENCY

CHRISTOPHER DAVIS

An International Working Group (“IWG”) on Cross-Border Insolvency was formed in 2010, following the 2008 financial crisis which continues to adversely impact the maritime sector. The IWG held its preliminary meeting in Buenos Aires in October 2010, in conjunction with the CMI Colloquium held in that city, and currently consists of the following members from civil and common law jurisdictions:

Christopher DAVIS, United States of America (Chair)
Sarah DERRINGTON, Australia (Rapporteur)
Manuel ALBA, Spain
Beiping CHU, China
Maurizio DARDANI, Italy
Olaf HARTENSTEIN, Germany
Sebastien LOOTGIETER, France
William SHARPE, Canada

The IWG’s comprehensive questionnaire on cross-border insolvency was sent to National Maritime Law Associations (“NMLAs”) in May 2012. 16 replies have been received to date, including 15 from NMLAs (Brazil, Canada, China, Croatia, Denmark, France, Ireland, Italy, Japan, Malta, Norway, Poland, Singapore, Spain, and United States of America), and one from a Titulary Member (José María Alcántara).

A comparative analysis of the replies to the questionnaire received (as of October 2012) was presented during a panel discussion held in conjunction with the CMI Beijing Conference work programme, which included Canadian, Chinese, Korean, Spanish and United States perspectives on cross-border insolvency.

Inasmuch as the subject of cross-border insolvency has remained topical, as evidenced by the continued filing of high-profile bankruptcies reported in Lloyd’s List and TradeWinds, an updated (albeit shorter) panel discussion formed part of the Dublin Symposium work programme in October 2013, which included presentations by Olaf Hartenstein of Germany on the reform of German insolvency law and Prof. Martin Davies of Tulane Law School on the interrelationship between limitation of liability and insolvency proceedings.
The subject was also included in the seminar programme of the CMI Hamburg Conference in June 2014, where Patrick Kirby addressed the topic of cross-border insolvency in the maritime context, and again in the work programme of the CMI Istanbul Colloquium in June 2015, where Prof. Martin Davies of Tulane Law School followed up on his Dublin presentation with a focus on the competing limitation funds (and claim priorities) between the UNCITRAL Model Law and traditional admiralty procedures of arrest and attachment.

The IWG is continuing to receive replies to its questionnaire, which are being analyzed and uploaded to the CMI’s website as they are received (along with other documents and papers of interest).

Analysis of the questionnaire replies received so far shows three principal legal settings for cross-border marine insolvencies. For insolvencies involving debtors and assets within the European Union (“EU”), EC Regulation 1346/2000 regulates conflicts of law and jurisdiction between member states (some Scandinavian EU member states are parties to a Nordic convention on cross-border insolvency which is similar to EC Regulation 1346/2000). For those countries which have adopted domestic legislation based upon the UNCITRAL Model Law on Cross-Border Insolvency, there is a developing trend of mutual recognition and coordinated administration of cross-border insolvency proceedings with cooperation between courts. Outside of those settings, the effect, operation and outcome of creditors’ enforcement of insolvency proceedings with multinational aspects is much less certain. Such uncertainty extends to cross-border insolvencies involving one jurisdiction to which EC Regulation 1346/2000 or the UNCITRAL Model Law applies and other jurisdictions which are not subject to either regime. Another area of uncertainty is the extent to which foreign recognition may be granted to reorganization proceedings such as those under Chapter 11 of the United States Bankruptcy Code, in which eventual restructuring of debt or payment to creditors may differ from generally accepted priority ranking of creditors’ claims against a ship.

The IWG is looking ahead to determine the best way forward for its work and will forward its recommendations in due course to the Executive Council. Some of the proposals under consideration include recommending a protocol to the UNCITRAL Model Law specifically addressing \textit{in rem} actions, developing a set of best practices based on the comparative analysis of the replies to the questionnaire received to date, identifying conflicts between existing cross-border insolvency legal regimes and international maritime conventions, promoting certainty and uniformity in the legal effect given to judicial sales of ships following a cross-border insolvency, and perhaps encouraging countries that have a substantial maritime sector and have yet to adopt a cross-border insolvency legal regime to do so in an effort to promote harmonization of the law in this area.
The IWG’s preliminary view is that developing support for a protocol to the UNCITRAL Model Law addressing in rem actions may be unrealistic (absent strong international support from those countries that have adopted the Model Law). However a new EU Regulation 2015/848, which repeals EC Regulation 1346/2000, and will apply from June 26, 2017, may encourage support for a protocol to the UNCITRAL Model Law providing a similar carve out for in rem claims. There are some excellent guidelines and/or best practices for handling cross-border insolvencies (albeit in a non-maritime context); thus, there is no perceived need for a new set of guidelines or best practices specifically addressing maritime cross-border insolvencies. Some of the less ambitious proposals referenced above may merit the IWG’s future attention and work. At a minimum, highlighting the current difficulties and uncertainties that surround the various legal regimes that govern cross-border maritime insolvencies (as well as identifying issues and decisions of interest) and bringing same to the attention of NMLAs should remain a useful exercise.

Pursuant to the President’s suggestion, the IWG’s Chair has been in contact with John Bradley of the U.S. MLA, who is the Chair of the U.S. MLA Committee on Bankruptcy and Insolvency, to discuss the parameters of a joint presentation or panel discussion on cross-border insolvency issues during the 2016 CMI Conference in New York. A joint session of the CMI IWG and U.S. MLA Committee has been scheduled for Wednesday, 4 May 2016, with panelists to include Justice Steven Rares of Australia, Judge Robert Gerber (retired) of New York, and Professor Martin Davies of Tulane University School of Law. The joint session will address cross-border issues affecting shipping insolvencies, including the interplay of maritime and insolvency law and the potential need for a protocol to the UNCITRAL Model Law addressing in rem actions. Other specific issues we hope to debate during the joint session in New York include whether a debtor’s center of main interests (“COMI”) should be evaluated as of the date of the filing of the main insolvency proceeding or the date of the filing of the ancillary proceeding, whether a system of reciprocal comity may be the way to reconcile competing and conflicting admiralty and insolvency procedures, whether there is a need for further uniformity and treaty harmonization in this area, and whether the better approach may be to adhere to traditional conflicts of law principles when dealing with cross-border insolvencies and foreign security interests.

New Orleans, 5th April 2016
GENERAL AVERAGE

CMI President’s letter to CMI members re the Review on Rules of General Average

CMI General Average Chair Bent Nielsen’s letter to CMI members explaining the proposed amendments

Proposed York Antwerp Rules 2016 (tabular format, comparing the 1994 and 2004 YAR)

Proposed CMI Guidelines on the York Antwerp Rules

Proposal for the amendment of Rule XXI (b) of the YAR 2004 relating to the determination of YAR rate of interest
General Average

COMITE MARITIME INTERNATIONAL

PRESIDENT

29 March 2016

Dear President


As you know the CMI has held numerous meetings of its International Sub-Committee (ISC) to review the Rules of General Average (The York Antwerp Rules) and has discussed its ongoing work in this area since prior to my appointment as President of the CMI in October 2012.

This letter attaches the working papers for the Conference in New York. They include:

- A letter dated 25 March 2016 from the Chair and Rapporteurs of the IWG and ISC.
- The draft York Antwerp Rules 2016 (tabular format).
- Proposal to change Guidelines on how the rate of interest under the York Antwerp Rules shall be decided.

The purpose of this letter is threefold

1. To congratulate those involved on all that has been done to date.

2. To remind everyone of the process which CMI as the Custodian of the York Antwerp Rules has historically undertaken with each amendment to the Rules.

3. To urge all parties to continue the good work and co-operation that has occurred to date in order to arrive at a set of Rules that will be contractually acceptable to everyone at the conclusion of the CMI Conference in New York.

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CMI President’s letter to CMI members

It is a credit to all of those who have given so much time to reaching a compromise on the provisions which had prevented the 2004 Rules, which had been agreed at the CMI Conference in Vancouver in 2004, from being given contractual effect across industry. (I think, with the benefit of hindsight, that the failure to achieve unanimity at Vancouver explains that failure).

The purpose of the Conference in New York is for the MLA delegates from around the world (assisted by representatives of those organisations which have Consultative status with the CMI) to discuss and negotiate the text over the two days of the Conference (Wednesday and Thursday, 4 and 5 May 2016) and for the final text which is agreed to be submitted to the Plenary and Assembly meetings on Friday 6 May for final approval. The finished product will then be the York Antwerp Rules 2016.

It is regrettable that practitioners from the legal profession, the insurance and shipping industries wasted an enormous amount of time and energy during the years leading up to the 2004 Conference and at the Conference in 2004 in producing a text which was not then taken up by industry. That has made necessary the considerable efforts of all parties to try and produce a text which will be satisfactory to industry for approval in New York in a few months time. I do not want to see the same fate befall the York Antwerp Rules 2016.

I am hopeful that with the critical substantive measures agreed between the principal stakeholders prior to the Conference it will only be minor changes of an editorial or drafting nature which will be put forward at the Conference. It is critical to the success of the work in New York that unanimity is achieved. I note from the reports of the previous major review of the York Antwerp Rules in 1994 in Sydney that unanimity was achieved on that occasion.

I will be reminding delegates at the Conference in New York of the words of one of my predecessors as President of the CMI, Albert Lilar, who said:

“We have taken into consideration that the shipowner, the merchant, the underwriter, the average adjuster, the banker, the person who is directly interested, all take a preponderant part in our work: that the task of the jurist is to discern that which, in this maritime community, is the general purpose, that which amongst divergent interests, is common to all; to discern what, among the diverse solutions, is the best, to contribute one’s learning and one’s experience; but that in the final analysis, the jurist must hold the pen and it is the man with the experience who must dictate the solution.”

The York Antwerp Rules were developed to assist ship owners, cargo owners and their respective insurers to deal with issues that arise when a general average sacrifice occurs. It is therefore incumbent on the representatives of those industry bodies to reach complete agreement on the text which they desire to take them forward for the next 10, 20 or more years and to communicate their joint views to the delegates at the Conference. This applies to both the substantive issues to which I have referred above and any editorial or drafting changes that are
proposed in New York. (If there is no consensus in relation to the entire text I should remind you that the next scheduled Conference of the CMI will not take place until 2020.)

There is no doubt Bent Nielsen, Taco Van der Valk and Richard Cornah, their team on the IWG and all the industry participants at the ISC meetings have done a huge amount of work in order to reach the present stage. The end is therefore in sight and I need to remind each branch of the industry that has been concerned with this topic over the last three to four years (and generally since 2004) that when the Plenary and Assembly meetings approve the text in New York that will be the text which industry has decided at that meeting it wants to give effect to, contractually, to the exclusion of all previous texts.

I therefore urge MLAs to ensure that there is a unity of purpose at the Conference, or if issues arise during the course of the Conference that the same degree of co-operation and unanimity which has been experienced in the last few years continues through to the end of the Conference in New York.

I am sure that the goodwill between all parties that I have been hearing about over the last three years will again assert itself in New York so that the consensus which had existed in this area of the law for many years between 1974 and 1994 and again since 1994 can be reproduced from 2016 going forward.

I look forward to seeing you in New York.

Yours faithfully

Stuart Hetherington
25 March 2016

Dear President

CMI Conference in New York 3-6 May 2016 – General Average

Review of the Rules of General Average

The text to be discussed at the New York Conference is for a large part the result of a substantive compromise between the principal industry stakeholders. In order to secure the success of the work of the past years it is essential that the careful balance embodied in the text is not disturbed. Within that context the Chairman and Rapporteurs of the International Working Group wish inform you that the compromise reached on the following subjects is considered so delicate that the CMI members are asked not to propose or adopt any changes to the principle or the wording of the proposed text:

- Rule G, paragraph 4 (Modified Bigham Clause)
- Rule IV (Salvage)
- Rule XVII (b) (Contributory values - Salvage)

With regard to the following subjects the CMI members are informed that minor changes of an editorial or drafting nature could be put forward, but that any changes to the principle embodied in the text would be considered controversial by the principal stakeholders:

- Rule B (Towage)
- Rule E (Informing the Average Adjuster)
- Rule X(b)(ii) (Detention during restowage)
General Average

Rule XXI (Interest)
Rule XXI (Deposits)

With regard to Rule XIV no agreement has been reached between the principal stakeholders regarding the treatment of temporary repairs to accidental damage. (The continuing allowance as general average of temporary repairs for the common safety and of sacrifice damage is supported unanimously.)

The issues are set out in detail in the various IWG working papers published on the CMI website but, at the risk of over-simplification, the position can be summarised as follows:

The International Chamber of Shipping and other bodies representing ship owning interests favour the retention of the wording as it currently stands in the 1994 Rules. Here a calculation is first made of general average expenses saved by doing temporary repairs (for example the cost of discharging, storing and reloading cargo which would be necessary if a vessel had to dry-dock to carry out permanent repairs). Next, the temporary repair costs are allowed as general average up to the total saved and without regard to the savings that might also accrue to other interests (for example, hull insurers get the benefit of permanent repairs being carried out more cheaply at the end of a voyage to China). Only if all the general average savings are exhausted is a possible allowance in particular average considered.

IUMI favour the method included in the 2004 Rules, which is set out in square brackets in the table of comparative texts that is also circulated. Under this method you again calculate the savings achieved by doing temporary repairs but you first look at the particular average savings (e.g. the saving in permanent repair costs because you can do these after discharge in China) and the temporary repair cost are charged to the Hull & Machinery claim up to the amount of those savings. Only if the temporary repair costs exceed all the particular average savings is the balance considered for allowance as general average up to the general average savings in the same way as the 1994 rules.

In essence the difference is whether the temporary repair costs should be a 'first charge' against general average or particular average. The merits of these different methods remain to be discussed and reviewed.

Finally, the Chairman and Rapporteurs of the International Working Group inform you that, after the many years of selecting and discussing the relevant issues, the introduction of any new subject at this stage would be considered controversial by the principle stakeholders. Delegations wishing to make any drafting proposal are asked to do so in writing one week prior to the Conference at the latest.
Guidelines on General Average

Although the proposed text for the new Rules is largely complete, the IWG has also been engaged in the parallel project concerning CMI Guidelines on general average that remains a work in progress. During the revision process undertaken by the IWG, many areas such were seen as being too dependent on local jurisdictions to make the drafting of useful new Rules possible.

However, against this background it was considered that CMI could play a useful role by providing a set of Guidelines that, while not binding, would reflect existing best practice and provide a source of information and guidance for commercial interests.

At the Istanbul International Sub-Committee meetings in June 2015, support for the introduction of CMI guidelines was confirmed and it was agreed that more detailed drafting work should commence. As reflected in the attached draft, much further progress has been made and further useful input from the delegates at New York is eagerly anticipated.

Guidelines on General Average Interest under YAR 2004

Finally, we attach a document with a proposal to amend the Guidelines to the York-Antwerp Rules 2004 concerning the fixing of the yearly interest rate under Rule XXI (b). The proposal aims to do away with the current procedure, which proves to be increasingly difficult, and to introduce a procedure which would link the interest rate under the York-Antwerp Rules 2004 to the interest rate applying under the proposed York-Antwerp Rules 2016.

Yours faithfully

Bent Nielsen
Richard Cornah
Taco van der Valk
This table sets out the draft York-Antwerp Rules, 2016 as proposed by the CMI’s International Sub-Committee (ISC) with, in parallel columns on either side, the York-Antwerp Rules of 1994 and 2004. All changes introduced in the proposed York-Antwerp Rules, 2016 are marked. Those changes that have been made for clarity or to harmonize the vocabulary appear in *bold italics*. Those changes that are of substance are either *underlined* as additions or *struck through* as deletions. In this manner, the ISC hopes to facilitate the review and discussion of all proposed changes at the CMI Conference to be held in New York City in May 2016.

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<tr>
<td><strong>RULE OF INTERPRETATION</strong></td>
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<td>In the adjustment of general average the following Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.</td>
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<td>General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.</td>
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<td>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.</td>
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<td>When measures are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.</td>
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<td>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.</td>
<td>2. A vessel is not in common peril with another vessel or vessels if she disconnects from the other vessel or vessels and thereby places herself in safety, if the vessels are in common peril and one is disconnected either to increase the disconnecting vessel's safety alone, or the safety of all vessels in the</td>
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<td><strong>General Average</strong></td>
<td>common maritime adventure, the disconnection will be a general average act.</td>
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<td>3. Where vessels involved in a common maritime adventure resort to a port or place of refuge, allowances under these Rules may be made in, relation to all each of the vessels. Subject to the provisions of paragraphs 3 and 4 of Rule G, allowances in general average shall cease at the time that the common maritime adventure comes to an end.</td>
<td><strong>General Average</strong></td>
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<td><strong>RULE C</strong></td>
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<td>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.</td>
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### Proposed York Antwerp Rules 2016 (tabular format, comparing the 1994 and 2004 YAR)

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<td><strong>RULE D</strong></td>
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<td>Rights to contribution in general average shall not be admitted as general average.</td>
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<td><strong>RULE E</strong></td>
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<td>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.</td>
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<td>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.</td>
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Failing such notification, or if within 12 months of a request for the same any of the parties fail to supply evidence in support of a notified claim, or particulars in support of a notified claim or evidence of value in respect of a contributory interest, the average in respect of the contributory interest shall be at liberty to estimate the extent of the allowance of the information available to him, which estimate may be challenged only on the grounds that it is manifestly incorrect.

4. Any party to the adventure, pursuing a recovery from a third party in respect of sacrifice or expenditure claimed in general average shall so advise the average adjuster full particulars of the recovery, within two months of the communication and only on the grounds that it is manifestly incorrect.

Any additional expense incurred in place of another expense, which would have been
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<td>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</td>
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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.

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<tr>
<th>RULE I. JETTISON OF CARGO</th>
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<td>No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognised custom of the trade.</td>
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<td>Loss of or damage to the property involved in the common maritime adventure by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship’s hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made</td>
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<td>Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching or scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage by smoke however caused or by heat of the fire.</td>
<td>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 <em>allowed</em> as general average; except that no <em>allowance</em> shall be made for damage by smoke however caused or by heat of the fire.</td>
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<td>Loss or damage sustained by cutting away wreck or parts of the ship which have been previously carried away or are effectively lost by accident shall not be made good as general average.</td>
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<td>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.</td>
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<td>(a) Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure.</td>
<td>(a) Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in general average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure and subject to the provisions of paragraphs (b), (c) and (d).</td>
<td>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.</td>
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<tr>
<td>(b) Notwithstanding (a) above, where the parties to the adventure have separate contractual or legal liability to salvors, salvage shall only be allowed should any of the following arise:</td>
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<td>(i) there is a subsequent accident or other circumstances resulting in loss or damage to property during the voyage that results in significant differences between salved and contributory values,</td>
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<td>(ii) there are significant general average sacrifices involving salvaged property.</td>
<td>(iii) salved values are manifestly incorrect and there is a significantly incorrect apportionment of salvage expenses.</td>
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<td>(iv) any of the parties to the salvage shall have paid all or any of the a significant proportion of salvage due from another party.</td>
<td>(v) a significant proportion of the parties have satisfied the salvage claim on substantially different terms, no regard being had to interest, currency correction or legal costs of either the salvor or the contributing interest.</td>
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Expenditure allowed in general average shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimising damage to the environment such as is referred to in Art. 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

(c) Salvage payments—expenditures 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 Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

(b) Special compensation payable to a salvor by the shipowner under Art. 14 of the said

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<td><strong>Convention to the extent specified in paragraph 4 of that Article or under any other provision similar in substance shall not be allowed in general average.</strong></td>
<td><strong>International Convention on Salvage, 1989 to the extent specified in paragraph 4 of that Article or under any other provision similar in substance (such as SCOPIC) shall not be allowed in general average and shall not be considered a salvage payment expenditure as referred to in paragraph (a) of this Rule.</strong></td>
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<td>Damage caused to any machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the propelling machinery and boilers shall in any circumstances be made good as general average.</td>
<td>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.</td>
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<td>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</td>
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<td>Cargo, ship’s materials and stores, or any of them, necessarily used for fuel for the common safety at a time of peril shall be admitted as general average, but when such an allowance is made for the cost of ship’s materials and stores the general average shall be credited with the estimated cost of the fuel which would otherwise have been consumed in prosecuting the intended voyage.</td>
<td>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.</td>
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<td>(a) When a ship shall have entered a port or place of refuge or 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 admitted.</td>
<td>(a) (i) When a ship shall have entered a port or place of refuge or 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.</td>
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<td>as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.</td>
<td>(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 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.</td>
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<td>When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a port or place of refuge and the cost of such removal including temporary repairs and towage shall be admitted as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.</td>
<td>(b) The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge, shall be admitted as general average, when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, except in cases where the damage to the ship is</td>
<td>(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</td>
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<td>(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 shall be applied to the prolongation of the voyage occasioned by such removal.</td>
<td>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</td>
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<td>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.</td>
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<td>The cost of handling on board or discharging cargo, fuel or stores shall not be admissible as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.</td>
<td>(i) 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. In which case the provisions of Rule XI shall apply to the extra period of detention occasioned by such restowage.</td>
<td>(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.</td>
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<td>(c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be admitted as general average. The provisions of Rule XI shall be applied to the extra period of detention occasioned by such reloading or restowing.</td>
<td>(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.</td>
<td>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.</td>
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<td>But when the ship is condemned or does not proceed on her original voyage, storage expenses shall be admitted as general average only up to the date of the ship’s condemnation or of the abandonment of the</td>
<td>But (d) When the ship is condemned or does not proceed on her original voyage, storage expenses shall be allowable as general average only up to the date of the ship’s condemnation or of the abandonment of the</td>
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<td>voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.</td>
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<td><strong>RULE XL WAGES AND MAINTENANCE OF CREW AND OTHER EXPENSES BEARING UP FOR AND IN A PORT OF REFUGE, ETC.</strong></td>
<td><strong>RULE XI- WAGES AND MAINTENANCE OF CREW AND OTHER EXPENSES PUTTING IN TO AND AT A PORT OF REFUGE, ETC.</strong></td>
<td><strong>RULE XL WAGES AND MAINTENANCE OF CREW AND OTHER EXPENSES PUTTING IN TO AND AT A PORT OF REFUGE, ETC.</strong></td>
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<tr>
<td>(a) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).</td>
<td>(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).</td>
<td>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).</td>
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<td>(b) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary</td>
<td>(b) (i) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary</td>
<td>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.</td>
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<td>c. (i) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary</td>
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<td>circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average.</td>
<td>extra-ordinary circumstances which render that entry or detention necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be allowed in general average.</td>
<td>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 upon her voyage, shall be allowed in general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.</td>
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<td>Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.</td>
<td>(ii) Fuel and stores consumed during the extra period of detention shall be <em>allowed</em> as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.</td>
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<td>Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.</td>
<td>(iii) Port charges incurred during the extra period of detention shall likewise be <em>allowed</em> as general average except such charges as are incurred solely by reason of repairs not allowable in general average.</td>
<td>(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.</td>
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<td>Provided that when 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, then</td>
<td>(iv) Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstance connected with such damage having taken place during the voyage</td>
<td>(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</td>
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<td>the wages and maintenance of master, officers and crew and fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be admissible as general average, even if the repairs are necessary for the safe prosecution of the voyage.</td>
<td>voyage, then the wages and maintenance of master, officers and crew and fuel and stores consumed and port charges incurred during the extra detention for repairs to damages so discovered shall not be <em>allowable</em> as general average, even if the repairs are necessary for the safe prosecution of the voyage.</td>
<td>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.</td>
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<td>When the ship is condemned or does not proceed on her original voyage, the wages and maintenance of the master, officers and crew and fuel and stores consumed and port charges shall be admitted as general average only up to the date of the ship’s condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.</td>
<td>(v) When the ship is condemned or does not proceed on her original voyage, the wages and maintenance of the master, officers and crew and fuel and stores consumed and port charges shall be <em>allowed</em> 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.</td>
<td>(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.</td>
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<td>(c) For the purpose of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.</td>
<td>(c) (i) For the purpose of these Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.</td>
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<td>(ii) For the purpose of these Rules, “port charges” shall include all customary or additional expenses incurred for the common safety or to enable a vessel to enter or remain at a port of refuge or call in the circumstances outlined in Rule XI(b)(i).</td>
<td>(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:</td>
<td>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:</td>
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<td>(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:</td>
<td>(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;</td>
<td>(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;</td>
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<td>(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;</td>
<td>(ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);</td>
<td>(ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);</td>
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<td>(ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);</td>
<td>(iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule XI(b), provided that when there is an actual escape or release of pollutant substances the cost of any additional measures required on that account to prevent</td>
<td>(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</td>
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<td>or minimise pollution or environmental damage shall not be allowed as general average;</td>
<td>account to prevent or minimise pollution or environmental damage shall not be allowed as general average;</td>
<td>or minimise pollution or environmental damage shall not be allowed as general average;</td>
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<td>(iv) necessarily in connection with the discharging, storing or reloading of cargo whenever the cost of those operations is admissible as general average.</td>
<td>(iv) necessarily in connection with the handling on board, discharging, storing or reloading of cargo, fuel or stores whenever the cost of those operations is allowable as general average.</td>
<td>(iv) necessarily in connection with the discharging, storing or reloading of cargo whenever the cost of those operations is allowable as general average.</td>
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**RULE XII. DAMAGE TO CARGO IN DISCHARGING, ETC.**

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

**RULE XIII. DEDUCTIONS FROM COST OF REPAIRS.**

Repairs to be allowed in general average shall not be subject to deductions in respect of “new for old” where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from

(a) Repairs to be allowed in general average shall not be subject to deductions in respect of “new for old” where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of
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<td>the 31st December of the year of completion of construction to the date of the general average act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.</td>
<td>the ship from the 31st December of the year of completion of construction to the date of the general average act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.</td>
<td>the 31st December of the year of completion of construction to the date of the general average act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.</td>
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<td>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.</td>
<td>(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.</td>
<td>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.</td>
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<td>No deduction shall be made in respect of provisions, stores, anchors and chain cables.</td>
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<td>Drydock and slipway dues and costs of shifting the ship shall be allowed in full.</td>
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<td>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</td>
<td>(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</td>
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<td>case one half of such costs shall be allowed.</td>
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**RULE XIV. TEMPORARY REPAIRS**

Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

(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

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
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<td>loading, call or refuge.]</td>
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<td>No deductions “new for old” shall be made from the cost of temporary repairs allowable as general average.</td>
<td>(c) No deductions “new for old” shall be made from the cost of temporary repairs allowable as general average.</td>
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<td><strong>RULE XV. LOSS OF FREIGHT</strong></td>
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<td>Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.</td>
<td>Loss of freight arising from damage to or loss of cargo shall be <strong>allowed</strong> as general average, either when caused by a general average act, or when the damage to or loss of cargo is so <strong>allowed</strong>.</td>
<td>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.</td>
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<td>Deductions 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.</td>
<td>Deductions 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.</td>
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<td><strong>RULE XVI. AMOUNT TO BE MADE GOOD FOR CARGO LOST OR DAMAGED BY SACRIFICE</strong></td>
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<td>The amount to be made good as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver</td>
<td>(a) (i) The amount to be allowed as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver</td>
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<td>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.</td>
<td>or if there is no such invoice from the shipped value. Such commercial invoice may be deemed by the average adjuster to reflect the value at the time of discharge irrespective of the place of final inland delivery under the Contract of Carriage. (ii) The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.</td>
<td>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.</td>
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When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

(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

(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.

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

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

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
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<td>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 cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge.</td>
<td>(ii) The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge. Any cargo may be excluded from the general average should the average adjuster consider that the cost of including it in the adjustment would be likely to be disproportionate to its eventual contribution.</td>
<td>(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.</td>
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<td>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.</td>
<td>(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.</td>
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<td>To these values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew’s</td>
<td>(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</td>
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<td>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.</td>
<td>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. <em>Where payment for salvage services has not been allowed as General Average by reason of Rule VI subparagraph b, deductions shall be limited to the amount paid to the salvors including interest and salvors’ costs.</em></td>
<td>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.</td>
</tr>
<tr>
<td>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.</td>
<td>(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.</td>
<td>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.</td>
</tr>
<tr>
<td>Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any</td>
<td>(d) Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any</td>
<td>d. Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any</td>
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<tr>
<td>amount made good as general average.</td>
<td>any amount allowed as general average.</td>
<td>amount allowed as general average.</td>
</tr>
<tr>
<td>Mails, passengers’ luggage, personal effects and accompanied private motor vehicles shall not contribute in general average.</td>
<td>(e) Mails, passengers’ luggage and accompanied personal effects and accompanied private motor vehicles shall not contribute to general average.</td>
<td>e. Mails, passengers’ luggage, personal effects and accompanied private motor vehicles shall not contribute to general average.</td>
</tr>
</tbody>
</table>

**RULE XVIII. DAMAGE TO SHIP**

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

- **(a) When repaired or replaced,**
  - The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

- **(b) When not repaired or replaced,**
  - The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value

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

- **(a) When repaired or replaced,**
  - The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

- **(b) When not repaired or replaced,**
  - The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>of the ship after deducting therefrom the estimated cost of repairing damage which is not</td>
<td>of the ship after deducting therefrom the estimated cost of repairing damage which is not</td>
<td>of the ship after deducting therefrom the estimated cost of repairing damage which is not</td>
</tr>
<tr>
<td>general average and the value of the ship in her damaged state which may be measured by</td>
<td>general average and the value of the ship in her damaged state which may be measured by</td>
<td>general average and the value of the ship in her damaged state which may be measured by</td>
</tr>
<tr>
<td>the net proceeds of sale, if any.</td>
<td>the net proceeds of sale, if any.</td>
<td>the net proceeds of sale, if any.</td>
</tr>
<tr>
<td>RULE XIX. UNDECLARED OR WRONGLY DECLARED CARGO</td>
<td>RULE XIX. UNDECLARED OR WRONGLY DECLARED CARGO</td>
<td>RULE XIX. UNDECLARED OR WRONGLY DECLARED CARGO</td>
</tr>
<tr>
<td>Damage or loss caused to goods loaded without the knowledge of the shipowner or his</td>
<td>(a) Damage or loss caused to goods loaded without the knowledge of the shipowner or his</td>
<td>a. Damage or loss caused to goods loaded without the knowledge of the Shipowner or his</td>
</tr>
<tr>
<td>agent or to goods wilfully misdescribed at time of shipment shall not be allowed as</td>
<td>agent or to goods wilfully misdescribed at the time of shipment shall not be allowed as</td>
<td>agent or to goods wilfully misdescribed at the time of shipment shall not be allowed as</td>
</tr>
<tr>
<td>general average, but such goods shall remain liable to contribute, if saved.</td>
<td>general average, but such goods shall remain liable to contribute, if saved.</td>
<td>general average, but such goods shall remain liable to contribute, if saved.</td>
</tr>
<tr>
<td>Damage or loss caused to goods which have been wrongly declared on shipment at a value</td>
<td>(b) Damage or loss caused to goods which have been wrongly declared at the time of</td>
<td>b. Damage or loss caused to goods which have been wrongly declared on shipment at a</td>
</tr>
<tr>
<td>which is lower than their real value shall be contributed for at the declared value,</td>
<td>shipment at a value which is lower than their real value shall be contributed for at the</td>
<td>value which is lower than their real value shall be contributed for at the declared</td>
</tr>
<tr>
<td>but such goods shall contribute upon their actual value.</td>
<td>allowed in proportion to their declared value, but such goods shall contribute upon their</td>
<td>value, but such goods shall contribute upon their actual value.</td>
</tr>
<tr>
<td>RULE XX. PROVISION OF FUNDS</td>
<td>RULE XX - PROVISION OF FUNDS</td>
<td>RULE XX. PROVISION OF FUNDS</td>
</tr>
<tr>
<td>A commission of 2 per cent. on general average disbursements, other than the wages and</td>
<td></td>
<td></td>
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<tr>
<td>maintenance of master, officers and crew and fuel and stores not replaced during the</td>
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</tr>
<tr>
<td>voyage, shall be allowed in general average.</td>
<td>(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.</td>
<td>(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.</td>
</tr>
<tr>
<td>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.</td>
<td>(b) The cost of insuring general average disbursements shall also be admitted in general average.</td>
<td>(b) The cost of insuring general average disbursements shall also be allowed in general average.</td>
</tr>
<tr>
<td>RULE XXI INTEREST ON LOSSES MADE GOOD IN GENERAL AVERAGE</td>
<td>RULE XXI - INTEREST ON LOSSES ALLOWED IN GENERAL AVERAGE</td>
<td>RULE XXI INTEREST ON LOSSES ALLOWED IN GENERAL AVERAGE</td>
</tr>
<tr>
<td>Interest shall be allowed on expenditure, sacrifices and allowances in general average at the rate of 7 per cent. per annum, until three months after the date of issue of the general average adjustment, due allowance being made for any payment on account by the contributory interests or from the general average deposit fund.</td>
<td>(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.</td>
<td>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.</td>
</tr>
<tr>
<td>(b) The rate used for calculating interest accruing during each calendar year shall be the 12-month ICE LIBOR for the currency in which the adjustment is prepared as announced on 1 January of that calendar year, increased by 4%. If the adjustment is prepared in a currency for which no ICE</td>
<td></td>
<td>b. Each year the Assembly of the Comite 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.</td>
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<tr>
<td>------------------------</td>
<td>------------------------</td>
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</tr>
<tr>
<td><strong>RULE XXII. TREATMENT OF CASH DEPOSITS</strong></td>
<td><strong>RULE XXII - TREATMENT OF CASH DEPOSITS</strong></td>
<td><strong>RULE XXII. TREATMENT OF CASH DEPOSITS</strong></td>
</tr>
<tr>
<td>Where cash deposits have been collected in respect of cargo’s liability for general average, salvage or special charges such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.</td>
<td>1. Where cash deposits have been collected by the average adjuster 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, earning interest where possible, in the name of the average adjuster. The average adjuster shall issue a deposit receipt in respect of all deposits.</td>
<td>Where cash deposits have been collected in respect of cargo’s liability for general average, salvage or special charges, such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.</td>
</tr>
<tr>
<td>2. The special account shall be constituted in accordance with the law regarding client or third party funds applicable in the</td>
<td></td>
<td></td>
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<tr>
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<tr>
<td>domicile of the average adjuster. The account shall be held separately from the average adjuster’s own funds, in trust or in compliance with similar rules of law providing for the administration of the funds of third parties.</td>
<td>3. The sums so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto, of the general average, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may only be made when such payments are certified to in writing by the average adjuster and advised notified to the depositor requesting their approval. Upon the receipt of the depositor’s approval, or in the absence of such approval within a period of 90 days, the average adjuster may deduct the amount of the payment on account or the final contribution from the deposit. Where refunds are due to the depositor, these may only be made upon surrender of the original deposit receipt.</td>
<td></td>
</tr>
<tr>
<td>4. All deposits and payments or refunds shall be without prejudice to the ultimate</td>
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</tr>
<tr>
<td>liability of the parties.</td>
<td><strong>RULE XXIII. – TIME BAR FOR CONTRIBUTIONS TO GENERAL AVERAGE</strong></td>
<td>RULE XXIII. – TIME BAR FOR CONTRIBUTIONS TO GENERAL AVERAGE</td>
</tr>
<tr>
<td>(a) Subject always to any mandatory rule on time limitation contained in any applicable law:</td>
<td>(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 termination of the common maritime adventure.</td>
<td>(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 termination of the common maritime adventure.</td>
</tr>
<tr>
<td>(ii) These periods may be extended if the parties so agree after the termination of the common maritime adventure.</td>
<td>(ii) These periods may be extended if the parties so agree after the termination of the common maritime adventure.</td>
<td></td>
</tr>
<tr>
<td>(b) This rule shall not apply as between the parties to the general average and their</td>
<td>b. This rule shall not apply as between the parties to the general average and their</td>
<td></td>
</tr>
</tbody>
</table>


PART II - THE WORK OF THE CMI

Proposed CMI Guidelines on the York Antwerp Rules

(THIRD DRAFT 05/01/2016)

YORK ANTWERP RULES

PROPOSALS FOR 2016

CMI GUIDELINES

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Introduction

In the 2011 CMI Questionnaire consideration was given to:

- including a “Definitions” section in the Rules in line with many international conventions
- expanding the Rules to cover matters that presently require reference to text books or other sources to understand fully.

It was agreed by the IWG that “Definitions” would simply extend the scope for arguments on the various definitions. Additionally, while making the Rules more self-contained had some merits, it would be at the expense of the brevity and flexibility of the present Rules which were considered to be essential features that must be retained.

Other areas such as maintaining liens and forms of security were seen as being too dependent on local jurisdictions to make the drafting of useful new Rules possible.

However, against this background it was considered that CMI could play a useful role by providing a set of Guidelines that, while not binding, would reflect existing best practice and provide a source of information and guidance for commercial interests.

At the Istanbul International Sub-Committee meetings in June 2015, support for the introduction of CMI guidelines was confirmed and it was agreed that more detailed drafting work should commence.

A second draft was submitted to the ISC / IWG meeting in London on 7/8 December 2015 and discussed in detail.

This third draft incorporates the results of those discussions but it remains a work in progress while a sub-committee is reviewing the wording for the recommended bond and guarantee forms, and the provisions regarding cash deposits (see C2 & 3, F2 below)

This sub-committee consists of:

- Taco van der Valk (Co-Rapporteur)
- Ben Browne (UK, IUMI)
- Joarn Groninger (Germany)

For present purposes we have included in section (C) the first draft of the recommended security documents in order to enable MLA’s to provide their input on this issue, as well as on the other guidelines where drafting has been completed.

In addition, possible further comments regarding the role of the adjuster are under consideration by ICS and IUMI (see D 1 below).
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   1. Objectives
   2. Effect of guidelines
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   2. York Antwerp Rules
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   4. Adjustment of General Average
   5. Example adjustment
   6. Contract of affreightment
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C) GENERAL AVERAGE SECURITY DOCUMENTS
   1. Introduction
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D) ROLE OF THE ADJUSTER
   1. Appointment of adjusters
   2. Best practice of adjusters

E) ROLE OF THE GENERAL INTEREST SURVEYOR

F) YORK ANTWERP RULES 2016
   1. Rule VI – Salvage
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CMI GUIDELINES RELATING TO GENERAL AVERAGE

A) INTRODUCTION

1. Objective

These guidelines are intended to assist in dealing with general average cases and to provide:
- general background information
- guidance as to recognised best practice
- recommended wordings

2. Effect of guidelines

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

3. Review and amendment

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

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

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

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

Background

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

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

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

- Matters that form part of the shipowners’ reasonable obligations to carry out the contracted voyage and those losses and expenses that arise in exceptional circumstances.

- Property and liability insurers as their differing responsibilities meet and sometimes merge, in the context of a serious casualty.

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

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

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

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

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

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

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

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

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

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

> "Rule Paramount

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

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

The following are simple examples of potential general average situations:

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

Adjustment of general average

The basic principles are:

1. **Property at risk**

   All the property that is involved in the voyage (or “common maritime adventure”), and is at risk at the time of the occurrence giving rise to the general average act is required to contribute to the general average losses and expenses. The contribution is based on a pro rata division according to the value of that property at the end of the voyage.

2. **Contributory values**

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

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

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

3. Termination of the voyage

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

4. “Made Good”

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

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

<table>
<thead>
<tr>
<th></th>
<th>Ship on</th>
<th>Cargo A on</th>
<th>Cargo B on</th>
<th>Cargo C on</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>1,000</td>
<td>334</td>
<td>333</td>
<td>333</td>
</tr>
<tr>
<td>Damage</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contribution</td>
<td></td>
<td>1,000</td>
<td>1,000</td>
<td>1,000</td>
</tr>
<tr>
<td>Pay</td>
<td>300</td>
<td>300</td>
<td>300</td>
<td>300</td>
</tr>
<tr>
<td>Pay</td>
<td>300</td>
<td>300</td>
<td>300</td>
<td>300</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th></th>
<th>Ship on</th>
<th>Cargo A on</th>
<th>Cargo B on</th>
<th>Cargo C on</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>1,000</td>
<td>1,000</td>
<td>1,000</td>
<td>1,000</td>
</tr>
<tr>
<td>Damage</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contribution</td>
<td></td>
<td>1,000</td>
<td>1,000</td>
<td>1,000</td>
</tr>
<tr>
<td>Pay</td>
<td>250</td>
<td>250</td>
<td>250</td>
<td>250</td>
</tr>
<tr>
<td>Pay</td>
<td>4,000</td>
<td>4,000</td>
<td>4,000</td>
<td>4,000</td>
</tr>
</tbody>
</table>

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

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

**Cargo owner's losses**
- Value of cargo jettisoned in efforts to refloat. US$ 500,000
- Damage to cargo caused by forced discharge, storage and reloading. 100,000

**General Average**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ship</td>
<td>US$2,100,000</td>
</tr>
<tr>
<td>Cargo</td>
<td>US$1,400,000</td>
</tr>
</tbody>
</table>

**Apportioned**

**Ship**
- Arrived value at destination in damaged condition. US$6,750,000
- Add allowance in general average for refloating damage. 250,000
  - US$7,000,000
  - Pays in pro rata US$ 700,000

**Cargo**
- Invoice value after deduction of loss and damage. US$13,400,000
- Add allowance in general average in respect of jettison and damage due to forced discharge. 800,000
  - US$21,000,000
  - Pays in pro rata US$2,100,000

(General Average equals 10% of the contributory values.)
**Balance under the adjustment**

**The Shipowner:**
- Receives credit for general average losses and expenses: US$ 1,500,000
- Pays general average contribution: 700,000

**Balance to receive:** US$ 800,000

**The cargo owner:**
- Pays general average contribution: USS 1,400,000
- Receives credit for general average losses: 600,000

**Balance to pay:** US$ 800,000

6. **Contract of affreightment**

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

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

The giving of general average security in the customary terms is a promise to pay any general average contribution that is found to be properly and legally due. Generally, if there has been a causative breach of contract the contribution cannot be so described.
7. General Average security

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

(a) Signature to an Average Bond by the owner or receiver of the cargo.

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

Recommended wordings for general average security documents are set out in section C) below.

8. Salvage security

In some circumstances and jurisdictions, and under salvage contracts such as Lloyd’s Open Form, the salver will have a separate right of action against each individual piece of property that is salvaged, once that property is brought into a place of safety. The salver may therefore exercise a lien on all the cargo at that place and the cargo interests will have to provide two sets of security:

a) salvage security to salvors where the salvage services end

b) general average security to the shipowner, on his own behalf and on behalf of all other property involved in the voyage, at destination.

If there are numerous cargo interests, as on a container ship, interim security may be provided to salvors by the shipowner or charterer to enable the vessel to continue to destination, where both types of security will have to be provided.
C) GENERAL AVERAGE SECURITY DOCUMENTS

1. Introduction

In most maritime jurisdictions it is recognised that the shipowner is entitled to exercise a lien on cargo at destination until satisfactory security for general average contributions is provided.

A variety of forms are used to provide security for the liability of the cargo owner (Average Bonds) and the undertakings given by their insurers (Average Guarantees).

Variations in the wordings of such forms have arisen largely as a result of market practices and the CMI offers the following templates providing recommended wordings that have been agreed by the International representatives of shipping interests (International Chamber of Shipping, ICS) and insurers (International Union of Marine Insurance, IUMI). It is recognised that the wording adopted in practice may vary in some cases due to circumstances or legal issues, however the recommended wordings are offered with the following objectives in mind.

- To provide an acceptable level of security to the shipowner and other parties to the adventure that may be general average creditors.
- To preserve the position under Rule D in respect of defences.
- To encourage the timely provision of information and evidence to ensure that the adjustment process is not delayed.

The leading professional associations for average adjusters have also endorsed these templates and will generally recommend their use. Where different wordings are required, the average adjuster should explain the reasons for their use then requesting security.

[As noted in the Introduction, a sub-committee of the IWG is conducting a review of these templates.]

2. Average Bond

2.1 The Average Bond is a distinct contract in its own right, and may, like any contract, be altered by agreement between the parties. The following wording is recommended by CMI and has also been endorsed by the International Chamber of Shipping and the International Union of Marine Insurance.

Examples of additional wording that may also be found in both Average Bonds and Average Guarantees are shown in para 3.2 below.


**AVGVERAGE BOND**

(Wordg recommended by Comite Maritime international)

To: The Owners of the vessel named below and other parties to the adventure as their interests may appear.

VESSEL: ........................................................................................................................................

CASUALTY and DATE: ...........................................................................................................................

Port of shipment: ...................................................................................................................................

Port of destination/discharge: ....................................................................................................................

[Container Number(s), optional] ..............................................................................................................

Bill of Lading or waybill number(s): ........................................................................................................

Quantity and Description of Goods: ........................................................................................................

Invoice Value (attach copy): ......................................................................................................................

In consideration of the delivery to us or to our order, on payment of the freight due, of the goods noted above we undertake to pay to the shipowners or to the Average Adjusters, XXXXXX on behalf of the various parties to the adventure as their interests may appear, the proportion of any salvage and/or general average and/or special charges which may hereafter be ascertained to be properly and legally due from the goods or the shippers or owners thereof [under an adjustment prepared in accordance with the provisions of the contract of affreightment governing the carriage of the goods or, failing any such provision, in accordance with the law and practice of the place where the common maritime adventure ended and which is properly and legally payable in respect of the goods by the shippers or owners thereof.]

We agree further:

a) to furnish promptly to the Average Adjusters particulars of the value of the goods, supported by a copy of the commercial invoice rendered to us or, if there is no such invoice, details of the shipped value,

b) to make a payment on account of such sum as may be properly and legally due in respect of the goods by the shippers or owners thereof as soon as the same may be certified by the said Average Adjusters after completion of the voyage,

c) that this agreement shall be governed by [insert required law and jurisdiction clause here]

COMPANY NAME: ................................................................................................................................

ADDRESS: .............................................................................................................................................

TELEPHONE: ........................................................................................................................................

EMAIL: ..................................................................................................................................................

AUTHORIZED SIGNATORY: ....................................................................................................................

DATE: ....................................................................................................................................................


3. **Average Guarantee**

3.1 As with the Average Bond, the Insurer's Average Guarantee is a distinct contract in its own right and may, like any contract, be altered by agreement between the parties. The following wording is recommended by CMI and has also been endorsed by the International Chamber of Shipping and the International Union of Marine Insurers.

**AVERAGE GUARANTEE**

(Wording recommended by Comite Maritime International)

To: the Owners of the vessel named below and other parties to the adventure as their interests may appear.

VESSEL: ........................................................................................................................................

CASUALTY and DATE: ..................................................................................................................

In consideration of the delivery in due course of the goods specified below to the consignees thereof without collection of a deposit, we, the undersigned insurers, hereby undertake to pay to the shipowners or to the Average Adjuster(s) on behalf of the various parties to the adventure as their interests may appear, any contribution to General Average and/or Salvage and/or Special Charges which may hereafter be ascertained by the appointed adjusters and which is to be properly and legally due in respect of the said goods.

We agree further:

a) to furnish promptly to the said Average Adjuster(s) all information which is available to us relative to the value and condition of the said goods;

b) to make payment(s) on account of such contribution as may be properly and legally due in respect of the said goods, as soon as the same may be certified by the said Average Adjusters after the completion of the voyage;

c) that this agreement shall be governed by [insert required law and jurisdiction clause here]

Port of shipment: .................................................................

Port of destination/discharge: .................................................................

Bill of Lading or waybill number(s): .................................................................

[Container Number(s); optional] .................................................................

Quantity and Description of Goods: .................................................................

Insurer's Policy / Reference number: .................................................................

Insured Value: .................................................................

SIGNATURE: ................................................................. NAME OF SIGNATORY: .................................................................

COMPANY NAME AND ADDRESS: .................................................................

TEL NO: ................................................................. EMAIL: .................................................................

DATE: .................................................................
3.2. It will be noted that paragraph (c) on both the Bond and Guarantee template anticipates the inclusion of a law and jurisdiction clause, for example:

"that this agreement shall be governed by English Law and the High Court of Justice of England and Wales shall have exclusive jurisdiction over any dispute arising out of this agreement and each party shall irrevocably submit to the jurisdiction of that Court."

Where the Guarantee is provided by Agents, the clause can be extended to include service of suit, for example:

"that this agreement shall be governed by English Law and the High Court of Justice of England and Wales shall have exclusive jurisdiction over any dispute arising out of this agreement and each party shall irrevocably submit to the jurisdiction of that Court. We agree to nominate an address for service of proceedings under this Guarantee in England and Wales within 7 days of a request by the Shipowners or their lawyers to do so."

4. According to the circumstances of the case the following optional wordings may be appropriate for addition into the Average Bond and Average Guarantee:

i) A currency clause

It may not be possible for the adjuster to confirm the currency of adjustment in the early stages of the case, but it is understood to assist insurers in their reserving if they are given the earliest possible notice of the currency of adjustment.

ii) Electronic transmission clause

Considerable savings in time and cost are achieved by electronic transmission of security documents, particularly in large containership cases. In such cases the following may be inserted:

"that this bond is intended to create a legally binding obligation notwithstanding that it may be transmitted and stored solely in electronic form. It is hereby agreed that transmission of this bond to the average adjusters by email constitutes good delivery to the Owners and other parties to the adventure who wish to enforce this bond."

5. BIMCO Average Bond Clause 2007

In some cases involving a large number of cargo interests and where the percentage contribution from each interest is likely to be modest, the average adjuster may recommend that Average Bonds are not collected from insured cargo interests. This can reduce the time and cost of the collection of general average security; reliance on one type of security (the Average Guarantee) is considered to be safe where the degree of exposure to an individual default is relatively small.

In order to extend the economies arising from this practice, BIMCO produced their Average Bond Clause for insertion in contracts of affreightment. After review by the Association of Average Adjusters, the current version was produced in 2007 and can be found on the BIMCO website. The Clause works by incorporating the undertakings found in the Average Bond (see para 2 above) and makes them part of the contract of carriage, with the intention that this removes the need to collect separate Average Bonds in cases where this clause has been included.
D) ROLE OF THE AVERAGE ADJUSTER

1. Appointment of average adjusters

In the majority of jurisdictions the findings of an average adjuster regarding amounts payable by the parties to a maritime adventure are not legally binding, as would be the case with an arbitration award. In rare cases an adjustment may be enforced by the Courts, but the majority of adjustments are accepted by the parties (subject to any Rule D defences) on the basis of the professional standing and expertise of the adjuster.

[Additional comments are under consideration by ICS and IUMI.]

2. Best practice of average adjusters

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

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

2.2 In all cases the average adjuster should:

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

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

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

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

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

2.3 On request, and when practicable, the adjuster should make available copies of reports and invoices relied upon in the preparation of the adjustment.
E) ROLE OF THE GENERAL INTEREST SURVEYOR

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

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

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

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

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

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

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

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

3. The Surveyor should also be aware that several other Surveyors may be in attendance on behalf of particular interests and that, for reasons of economy, duplication of reporting should be avoided. In the event of any doubt arising as to the depth of investigation required from the G.A. Surveyor, the Adjuster should be contacted for guidance. The Surveyor is effectively appointed to act on behalf of the whole General Average community, any of whom are generally entitled to view all his exchanges of correspondence and reports.
F) YORK ANTWERP RULES 2016

1. Rule VI - Salvage

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

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

It was pointed out that many leading adjusters will, when appropriate, propose to the parties that if re-appointment of salvage as general average will not produce a meaningful change in the figures or will be disproportionately costly, the salvage should be omitted from the adjustment; it is then up to the parties to decide whether it should be included or not. However, it was considered that a means should be found to make this practice more universal and to set out express criteria that would help to ensure that the allowance and re-appointment of salvage as general average (where already paid separately by ship and cargo etc.) would only occur in cases where there was a sound equitable or financial basis for doing so.

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

When assessing whether there is a significant difference between settlements and awards for the purposes of Rule VI(b)(5) the adjuster should have regard only to the notional award or settlement against all salved interests before currency adjustment. Interest, cost of collecting security and all parties’ legal costs.

2. Rule XXII - Treatment of Cash Deposits

Under Rule XXII(2) the adjuster is required to hold deposits in a special account constituted in accordance with the legislation regarding holding client or third party funds that applies in the domicile of the appointed average adjuster.

In the absence of such legislation, or where it is incomplete, CMI recommends that any special account should have the following features:

- Funds should be held separately from the normal operating accounts of the adjuster.

- Funds should be protected in the event of liquidation or the cessation of the average adjuster’s business.

- The holding bank should provide regular statements that show all transactions clearly.

[Wording regarding protection of funds to be considered further by the sub-committee looking at security document templates].
PROPOSAL
TO CHANGE THE GUIDELINES OF HOW
THE RATE OF INTEREST UNDER THE YAR 2004
SHALL BE DECIDED

Rule XXI (b) of the YAR 2004 provides that:

*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.*

When the YAR 2004 were adopted the Plenary Session of the Vancouver Conference also adopted the following:

“Guidelines for the Assembly of the Comité Maritime International 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.”

Since 2004 the Assembly has each year fixed the rate of interest which is published in CMI’s website. The Assembly has made its decision at the basis of reports made by a small working group.
Proposal for the amendment of Rule XXI (b) of the YAR 2004

Information about the basic level of interest such as LIBOR are of course easily available, but the additional “spread” which must be added to reflect the rate of interest “charged by a first class commercial bank to a ship owner of good credit rating” has been increasingly difficult to ascertain.

The bankers consulted advise that one year loans to ship owners of good credit rating from a first class commercial bank hardly exist anymore. Such banks would normally not grant one year loans to ship owners not even if they are of good credit rating. Such ship owners are rare and would normally use other methods of finance should they need this. Even in long time financing of ships the spread varies considerable from bank to bank and from ship owner to ship owner. For long term financing it may however still be possible to get information of the spread charged to a ship owner of good credit rating.

As is well known the YAR 2004 are not generally used, however they are applied in some important trades and by some large charterers. It is unlikely that this situation will change soon if at all by the expected adoption of the new YAR. Even if this happens there will still be a need to decide the rate of interest for some years until all pending GA-matters under the 2004 YAR are finalised.

It is therefore necessary that the Assembly continues to decide which rate of interest shall apply year by year. In view of the difficulties to do this it is proposed to amend the guidelines for fixing interest under the YAR 2014.

Since the commercial parties have agreed that the rate of interest under the expected new YAR shall be LIBOR plus 4 percent it is proposed to use the same rate of interest for the 2004 YAR. This may be achieved by amending these guidelines to read as follows:

“Guidelines for the Assembly of the Comité Maritime International 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.

The rate shall be based upon a reasonable estimate but the Assembly shall as a general principle normally decide that the rate shall be as provided for in Rule XXI (b) of the York Antwerp Rules 2016.

These guidelines shall apply to the rate of interest from the first of January 2017.

Any amendment of these guidelines shall be made by a decision of a conference of the CMI.”

Bent Nielsen
CMI President’s letter to CMI members enclosing the Submission to the IMO Legal Committee  Page 278

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The CMI Draft Convention on Recognition of Foreign Judicial Sales of Ships - Moving forward with the IMO, by Andrew Robinson  » 293
31 March 2016

Presidents of NMLAs

Dear President

**CMI Judicial Sale of Ships**

I am attaching the Submission which has today been forwarded to the IMO Legal Committee, together with its attachments.

The IMO Legal Committee meets during the week commencing 6 June. The time between now and then needs to be utilised to bring this material to the attention of as many delegations who will be attending the IMO Legal Committee as possible with a view to urging them to support this initiative of the CMI which is being co-sponsored by China and the Republic of Korea. I would be grateful if you would bring it to the attention of your country’s delegation as soon as possible.

If you receive any enquiries from your government’s representatives after you have contacted them, please do not hesitate to contact me, Hony Li, Jonathan Lux or Andrew Robinson who have worked tirelessly since last year’s meeting of the IMO Legal Committee to prepare the attached documentation.

With kind regards,

Stuart Hetherington
ANY OTHER BUSINESS

Proposal to add a new Output to develop a new Instrument on Foreign Judicial Sales of Ships and their Recognition

Submitted by China, the Republic of Korea and the Comité Maritime International (CMI)

Executive Summary: This document proposes a new output for the Legal Committee to develop an international convention on the foreign judicial sale of ships and their recognition based on the draft convention prepared by CMI to ensure that the purchaser of a ship in a judicial sale can be confident of obtaining clean title to the ship.

Strategic directions: 12

High-level actions: 12.2

Planned output: No related provisions

Action to be taken: Paragraph 10

Related documents: LEG 102/11/2

1.1 This document is submitted in accordance with paragraph 4.7 of the Guidelines on the Organization and Method of Work of the Legal Committee (LEG.1/Circ.7) regarding the submission of proposals for new unplanned outputs.

1.2 This document provides the rationale for, and an outline of, a draft international convention on the foreign judicial sales of ships and their recognition (the draft convention) which was approved by the Assembly of the 41st International Conference of the Comité Maritime International (CMI), held in Hamburg on 17 June 2014.

1.3 Many hundreds of ships are sold each year through some competent form of judicial sale. The underlying cause or causes of a judicial sale may be numerous, but usually relate to the non-payment of debts due and owing, and, on occasion, following forfeiture by the State. Purchasers, and subsequent purchasers, must be able to take clean title to the ship so sold and be able to de-flag the ship from its pre-sale registry and re-flag the ship in the purchaser’s selected registry so as to be able to trade the vessel appropriately without the threat of costly delays and expensive litigation.

1.4 There is currently no international instrument that addresses the recognition of judicial sales. Nor is there any instrument that adequately protects purchasers from prior claims and which addresses the de-registration on re-flagging and re-registration of ships from and to national registries. Proper registration of ships is key to the sound governance of maritime safety, marine environment protection and marine technical issues.

1.5 The purpose of the draft convention is to ensure that the purchaser of a ship in a judicial sale can be confident of obtaining clean title to the ship, free of and unencumbered by any mortgages or similar liens or charges placed on the ship prior to the judicial sale and is able, against presentation of a suitable certificate issued by the court which conducted the judicial sale, to delete and re-register the ship in the purchaser’s selected registry.
1.6 This, in turn, will enable the purchased ship to trade freely; and to ensure that the ship will realize a greater sale price which will benefit all the related parties, including creditors and the ship-owners - and by so doing, the draft convention will promote the smooth and efficient flow of sea-borne trade and a reduction in the risks associated with such trade through the cooperation of States who become parties to the convention (State parties).

1.7 The purchase of vessels is generally financed by a ship mortgage from a bank where the bank's main security for repayment is the ship itself. The draft convention will permit banks to provide ship finance confident in the knowledge that the ship will realize its full market value at a judicial sale and not the reduced value realisable where there is the risk, as at present, that the ship may be arrested for claims predating the judicial sale.

1.8 Most importantly, the judiciaries of many countries have observed that the need to recognize judicial sales by foreign, competent courts forms part of the comity of nations and contributes to the general well-being of international trade.

1.9 IMO, as the sole United Nations specialized agency with responsibility for the promotion of safe and efficient international shipping practices should, it is submitted, be part of the process in developing this much needed international framework for the judicial sale of ships.

2 IMO's objectives

2.1 It is submitted that the proposal is within the scope of IMO's objectives to ensure and strengthen the linkage between safe, secure, efficient and environmentally friendly maritime transportation, and the development of global trade and the world economy. It is indisputable that the carriage of goods in ships is the cornerstone of global trade and a major driver of world economies – over 90% of world trade moves by sea.

2.2 It is further submitted that the IMO’s involvement in issues of this kind has precedent as evidenced by:

(1) the International Convention on Maritime Liens and Mortgages, 1993 which was adopted by the United Nations/International Maritime Organization Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages held in Geneva from 19 April to 7 May 1993; and

(2) the International Convention on Arrest of Ships, 1999 which was adopted at the United Nations/International Maritime Organization Diplomatic Conference on Arrest of Ships held in Geneva from 1 to 12 March 1999.

2.3 Both of these conventions were convened by the Secretary-General of UNCTAD and the Secretary-General of IMO.

2.4 It is also submitted that the development of the convention could also be linked to the effective implementation of the SOLAS requirement for a Continuous Synopsis Record (chapter XI-1, regulation 5 of SOLAS), as the convention would avoid problems with registration so that the issuance of the CSR would be facilitated.

2.5 Issues relevant to the ownership and registration of ships are pivotal to the sound administration and safety of maritime transportation. The judicial sale of ships is a regular and inevitable consequence of doing maritime business. Competently conducted judicial sales should, generally:

(1) allow claimants to satisfy debts;

(2) provide purchasers, and subsequent purchasers, with the security that they can trade their vessel on a global basis with the knowledge that the ship can be permanently registered in a registry of their choice;
(3) allow purchasers to trade with the vessel and ensure that trade will not be hindered by the arrest, attachment or detention of the vessel for debts that arose prior to the judicial sale;

(4) enhance the quality of shipping through encouraging the proper management of ships by facilitating their appropriate registration.

3 Compelling need

3.1 As there is currently no international instrument dealing with the recognition of foreign judicial sales of ships it can be said, with some confidence, that in this regard maritime transportation is neither secure nor efficient and hinders rather than promotes global trade and the world economy. The need for intervention by inter-governmental and international organisations has been clearly recognised both judicially and by national and international maritime bodies. The recognition of foreign judicial ship sales is fundamental to international maritime law.

3.2 The difficulties that arise when one country will not recognise an order for the judicial sale of a ship in another country has been succinctly summarised as follows:

(1) It is an affront to the Court and the State ordering the sale;

(2) It represents a refusal by that country to abide by the decisions of a Court in another country, and an exception to a rule honoured by every nation in the world.

(3) If other countries, or other debtors, decided to follow this bad example, it could create confusion in the area which can be effectively controlled only with the good faith of all seafaring nations.

3.3 The difficulty of dealing with the recognition of judicial sales at an international level has also been highlighted. In the Canadian case of the ship "Galaxias" (which is summarised in one of the attachments to this paper) the Court noted that:

(1) whilst a purchaser on a judicial sale will take a clean title free and clear of all encumbrances according to the laws of Canada and notwithstanding that it is clear that Canadian Courts desire and expect that the Courts and Governments of other nations will respect its orders and judgments, particularly in the area of maritime law, however this was not an area over which a national jurisdiction exercises control, nor is it appropriate that it attempt to do so; and

(2) international regulation of the judicial sales was necessary;

(3) in order to promote the free flow of maritime traffic, countries have, generally speaking, agreed to apply a uniform set of admiralty rules and laws. This would not, prevent any country from legally completely ignoring or setting aside any normally accepted practice or any law which is universally recognised in admiralty matters or even a rule of law which that country might previously have adopted by treaty. This is precisely what territorial jurisdiction means, and, until there exists some world authority with a superior globally enforceable overriding jurisdiction this is what we all must live with.

3.4 In commenting on judicial orders for the sales of ships that did not ensure the passing of clean title, the same Court noted that admiralty lawyers and all lay people in the shipping world, involved in any way in the purchase and sale of ships, will invariably feel that this would greatly reduce the amounts which can be obtained from court sales of vessels and render some ships completely unsaleable. The legitimate claims of many local and foreign creditors would thus be defeated by the resulting ridiculously low payments into Court of purchase prices.

1 The Associate Chief Justice Noel in Vrac Mar Inc. v. Demetries Karamanis et al [1972] FC 430 at p434 (Canada)
2 (1988) LMLN 240, being a judgment of the Federal Court of Canada
3 At page 11 of the judgment
4 At page 12 of the judgment
3.5 These views have been echoed in other judgments of courts in many jurisdictions but it is submitted that the above extracts are sufficient evidence of the effect of the non-recognition of judicial sales on efficient maritime transportation, the development of global trade and the world economy.

3.6 In order for the recognition of foreign judicial ship sales to be uniformly accepted by way of an international instrument, the intervention of the IMO in co-ordinating with other international bodies who have a mutual interest in such an instrument will be of considerable benefit to the international maritime community.

3.7 The IMO has stated that its highest priority is the safety of human life at sea with a particular focus on eliminating shipping that fails to meet and maintain technical, operational and safety management standards. As a high level action in this regard, the IMO intends keeping under review and supporting flag, and Port State implementation for enhancing and monitoring compliance.

3.8 Whilst national vessel registries may reflect the registered ownership of vessels, many registries may not, for various policy reasons, follow changes in the ownership of ships. Whilst ownership identity is nonetheless an important function of a ships' registry, the primary function of a register is to give a vessel “nationality”. A vessel acquires thereby the privileges, protections and the burdens of vessels operating under allegiance to the sovereign.

3.9 It is submitted that the IMO has an interest in the efficient administration of ships’ registries. The de-registration and re-registration from and into ships’ registries of ships sold by judicial sale would add support both to the IMO strategic direction and to the proposed high level action.

3.10 While there has been no exhaustive compilation of data on the number of ships sold by way of judicial sale, the data from four significant maritime jurisdictions in Asia (Republic of Korea, China, Singapore and Japan) shows that, during the period 2010 – 2014, more than 480 ships were sold by way of judicial sale per year in these countries.

3.11 It follows that the number of ship sales that would benefit from the certainty provided by the draft convention would run to thousands of ships a year. It is submitted that this information, alone, establishes a compelling need for such an international instrument.

3.12 The courts have also noted a compelling need for an international regime dealing with the recognition of judicial sales of ships as set out in the aforementioned extracts from the judgment in the “Galaxias”.

3.13 In addition, in the English case “Acrux” (a summary of which is attached) Mr Justice Hewson confirmed that Courts must recognise:

“proper sales by competent Courts of Admiralty, or prize, abroad – it is part of the comity of nations as well as a contribution to the general well-being of international maritime trade”

3.14 Whilst many judicial sales proceed as intended, problems still arise, some of which become the subject matter of further lengthy and costly judicial intervention.

3.15 There are a number of reported decisions where various problems are encountered. Summaries are attached of the following cases that reflect the global nature of the problem: The “Acrux” (England), the “Galaxias” (Canada), the “Great Eagle” (South Africa), the
PART II - THE WORK OF THE CMI

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“Union”10 (China), the “Katerina”11 (The Netherlands), the “Ahmet Bay”12 (USA) and the “Sam Dragon”13 (Ireland).

3.16 If the proposed draft convention had been in force and ratified by the countries concerned, then in all probability the disputes which formed the subject matter of these cases would not have arisen and there would have been a very considerable saving of legal costs in the greater interests of the maritime industry as a whole.

3.17 Even where problems do not become the subject of further judicial involvement, the commercial and legal costs incurred in dealing with these issues are considerable, and the delays and interruptions to the owner’s rights to trade the vessel severely interrupted. In most circumstances, the innocent owner is faced with a ship that has been arrested by a claimant.

3.18 As was recognised by Mr Justice Didcott (in an arrest case, not involving a judicial sale) in the South African case of the mv Paz14 (a summary of which is attached): “It is a serious business to attach a ship. To stop or delay its departure from one of our ports, to interrupt its voyage for longer than the period it was due to remain, can have and usually has consequences which are commercially damaging to its owner or charterer, not to mention those who are relying upon its arrival at other ports to load or discharge cargo.”

3.19 In certain jurisdictions (such as China) the ship registration authorities will not accept foreign court documents as effective documents for the registration and de-registration of ships.

3.20 The proposal for approval of the final text of the draft convention was made by the China Maritime Law Association at the CMI Assembly in Hamburg in 2014. The proposal was supported by 24 acceptances with two abstentions and no vote against. The 24 acceptances comprise the National Maritime Law Associations of Argentina, Australia, Belgium, Canada, China, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Malta, the Netherlands, New Zealand, Nigeria, Norway, Republic of Korea, Spain, Sweden, Switzerland, Turkey, United Kingdom and the United States. The two abstentions were the National Maritime Law Associations of Brazil and Poland.

3.21 The CMI, heeding the concerns of various National Maritime Law Associations, recognized that the needs of the maritime industry and ship finance required that the judicial sale of ships is maintained as an effective way of securing and enforcing maritime claims and the enforcement of judgments or arbitral awards or other enforceable documents against the owners of ships.

4 Analysis of the issue

4.1 Any uncertainty for the prospective purchaser regarding the international recognition of a foreign judicial sale of a ship and the deletion or transfer of registry may have an adverse effect upon the price realised by a ship sold under judicial sale to the detriment of interested parties and the maritime industry as a whole.

4.2 Necessary and sufficient protection should be provided to purchasers of ships at judicial sales by limiting the remedies available to interested parties to challenge the validity of the judicial sale and the subsequent transfer of the ownership in the ship.

4.3 It is important to highlight the important legal principle that flows from a judicial sale that once a ship is sold by way of a judicial sale, the ship should, with only very limited exceptions no longer be subject to arrest for any claim arising prior to its judicial sale.

4.4 The objective of the recognition of a judicial sale of a ship requires that, to the extent possible, uniform rules are adopted with regard to the notice of the judicial sale, the legal effects of that sale and de-registration or registration of the ship.

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11 KG04/912P, LAX DB 4789
12 623 F.SUP.2d635
13 [2012] IJHC 240
14 1984 (3) 261 (D).
4.5 These then were the issues that the draft convention sought to address, as follows:

(1) As the draft convention was to focus on the recognition of judicial sales, the structure of the instrument was, initially, modelled on the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

(2) Article 1 provides a list of definitions which has proved most useful in keeping the balance of the articles concise. Care has been taken to align definitions with those adopted by other conventions, in particular the International Convention on Maritime Liens and Mortgages, 1993.

(3) Article 2 provides that the convention shall apply to the conditions in which a judicial sale taking place in one State shall be sufficient for recognition in another.

(4) Article 3 sets out the parties to whom notice of the pending judicial sale must be given. It also requires such notice to be given by the competent authority in the State of the judicial sale. The article sets out what information should be set out in the notice. In all other respects, the notice is to be given in accordance with the law of the State of the judicial sale.

(5) Article 4 determines the effect of a judicial sale. The basic concept being that any title to and rights and interests in the ship that is the subject of the judicial sale shall be extinguished and any mortgage or similar charge will cease to attach to the ship and clean title to the ship will be acquired by the purchaser. The sale will not, however, extinguish any personal rights that a claimant may have against the owner or any other person personally liable to the creditor (to the extent that the debt has not been extinguished by the proceeds of the sale of the ship).

(6) Article 5 provides for the minimum content and mechanics of issuing a certificate of judicial sale by the competent authority. This certificate confirms that the ship has been sold in accordance with the laws of the State and the provisions of the convention. The certificate is to be issued substantially in the form of a model certificate annexed to the convention. In the absence of proof of circumstances referred to in article 8, the certificate shall be regarded, in terms of article 7, as conclusive evidence that the judicial sale has taken place and has the effect provided for in article 4.

(7) Article 6 provides that, against production of the article 5 certificate, the registry where the ship was registered prior to the judicial sale shall delete all mortgages or similar charges and either register the ship in the name of the new purchaser, or delete the ship from that register and issue a certificate of deregistration so that the ship can be registered elsewhere. Where the ship was on bareboat charter, and was flying the flag of a state of bareboat charter registration, then the ship shall be deleted from that registry against production of the certificate.

(8) Article 7 provides that subject to article 8, the court of a State party shall, on the application of a purchaser, recognize a judicial sale conducted in another State where that State has issued an article 5 certificate and regard that sale as having passed clean title to the purchaser, and that the ship was sold free of any mortgage or similar charge. If the ship sold by way of a judicial sale has been arrested, or its arrest is sought, for a claim that arose prior to the judicial sale, then the court shall dismiss or set aside the arrest, or reject any application for the ships arrest. The only exception is if the arresting party is an “interested person” (defined as the pre-sale owner or the holder of certain registered charges) and is able to show that circumstances exist that bring that persons case with the parameters of article 8.

(9) Article 8 sets out the circumstances in which the recognition of a judicial sale will be suspended or refused at the request of the interested person. The sale will not be recognized if it is shown that the ship was not physically within the jurisdiction of the State where the judicial sale took place. Recognition will be suspended where the sale is being challenged in the court of the State of judicial sale. Recognition will be refused where it can be shown that the sale has been nullified by a competent court of
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the State of judicial sale or where recognition would be manifestly contrary to public policy.

(10) Article 9 allows State parties to restrict the application of the convention to recognition of judicial sales conducted in State parties.

(11) Article 10 provides that nothing in the convention shall derogate from any other basis for the recognition of judicial sales under any other bi-lateral or multi-lateral convention, instrument, agreement or principle of comity.

5 Analysis of the implications

5.1 If an international convention can prevent ships from being arrested unnecessarily, and international trade and maritime commerce from being disrupted then, it is submitted, a compelling need for such an instrument is clearly made out. Further examples, of the compelling need for the proposed convention will appear from the submissions made in the further information provided below.

5.2 There is currently no suitable international instrument that recognises the judicial sale of ships and the manner in which a competent sale of a ship should be carried out.

5.3 As a result problems have arisen, and will continue to arise, with regard to the arrest, attachment or detention of ships by debtors with claims arising prior to the judicial sale.

5.4 It is not considered that the proposal will have any major implications on cost to the maritime industry. Almost all jurisdictions already require some form of certification of a judicial sale, so this is unlikely to present an additional, or significant additional, burden on either the purchaser or the maritime administration.

6 Benefits

6.1 The recognition of foreign judicial sales will create certainty to innocent purchasers that they have clean title and can trade the vessel without disruption from debts that arose prior to judicial sale. Purchasers will be able to de-flag ships from the erstwhile owner’s registry and re-flag them in a registry of their choice.

6.2 The innocent purchaser will be able to take title to its vessel secure in the knowledge that the validity of the judicial sale will not be challenged.

7 Industry standard

7.1 There are no applicable industry standards. Three existing conventions bear mention, however.

7.2 The International Convention on Maritime Liens and Mortgages, 1993 has not been successful as it contains controversial provisions which do not solve the problems of the recognition of foreign judicial sales, and the wording with respect to recognition is more in the nature of denying recognition, rather than granting recognition of the judicial sale. However, wherever possible, the draft convention has been prepared so that its provisions do not conflict with those set out in the Maritime Liens and Mortgages Convention.

7.3 Whilst the International Convention Relating to the Arrest of Sea-going Ships, 1952 seeks to regulate the claims that can be enforced by the arrest of a vessel, it does not provide for the judicial sale of a ship.

7.4 The International Convention on the Arrest of Ships, 1999 mentions the judicial or forced sale of ships, but only in the context of its article 3.3, allowing, as an exception to the general rule, the arrest of a ship owned by a person not liable for the claim.
Judicial Sales

8 Output
8.1 Specific

The draft convention addresses the specific issues and problems that had been encountered due to the non-recognition of foreign judicial sales.

8.2 Measureable

The output is measurable with a view to the number of ratifications the new convention may achieve and hence, the number of judicial sales that will be covered by the convention.

8.3 Achievable

The draft convention has already been prepared by the CMI through the considerable contribution of numerous National Maritime Law Associations and the convention has the sponsorship of two countries, 24 National Maritime Law Associations (this figure is likely to increase) and the CMI and it is reasonable to expect that, with the assistance of the IMO, it will be acceptable to a large number of countries.

8.4 Realistic

Bearing in mind the support given to the draft convention thus far, it is submitted that the general acceptance of the draft convention is a realistic outcome.

8.5 Time-bound

The development of the convention is time-bound and it will have specific entry into force conditions.

9 Priority/urgency

9.1 Issues arising in respect of the non-recognition of Judicial Sales are on-going. Given the current depressed state of the shipping market, judicial sales are likely to increase over the foreseeable future.

9.2 It is therefore proposed that the development of the draft convention is added as a new output to the agenda of the Legal Committee.

10 Action requested of the Committee

The Committee is invited to consider the proposal in this document and agree to add a new output to develop a new instrument on foreign judicial sales of ships and their recognition, and to take action as appropriate.
The CMI Draft Convention on recognition of foreign judicial sales of ships, by J. Lux

THE CMI DRAFT CONVENTION ON RECOGNITION OF FOREIGN JUDICIAL SALES OF SHIPS – THE JOURNEY THUS FAR

JONATHAN LUX*

The draft International Convention on Foreign Judicial Sales of Ships and their Recognition (known as the “Beijing draft”) can be found at the CMI website1. In the limited time allotted to me I will set out: –
– Introduction
– Why a new Convention is needed
– The substance of the draft Convention
– A summary of the work to date
– Conclusions

Introduction

The CMI is the oldest international organisation exclusively concerned with the unification of Maritime law and related shipping practice. In 1897 the partnership between the Belgian government and the CMI resulted in the famous series of “Brussels Diplomatic Conferences on Maritime Law”. In the last 100 years the CMI has made an outstanding contribution to the unification of maritime law throughout the world. The most well-known international maritime conventions emanating from the CMI include The Hague Rules 1924, the Collisions Convention 1910, the Arrest Convention 1952, et cetera.

The CMI had its 41st International Conference in Hamburg in June 2014 and produced a draft International Convention on Foreign Judicial Sales of Ships and their Recognition. This is probably the CMI’s most important work product since the Outline Instrument for the Rotterdam Rules. In the Resolution adopted at the CMI Assembly, it is stated that:

“The CMI approves the text of the draft International Convention on Foreign Judicial Sales of Ships and their Recognition (known as the “Beijing draft”) for submission to such appropriate inter-governmental or

* Jonathan Lux, the Rapporteur of CMI International Working Group on Recognition of Foreign Judicial Sales of Ships.

1 http://comitemaritime.org/Recognition-of-foreign-Judicial-Sales-of-Ships/0,2750,15032,00.html.
international organisation, as the CMI Executive Council thinks appropriate, for its consideration and adoption – – “.

The cooperation between the CMI and the IMO Legal Committee dates from the stranding of the “Torrey Canyon” in March 1967. From that time onwards the cooperation between the two bodies has been continuous and many important Conventions have resulted, including the Athens Convention 1974, the LLMC 1976 and the Salvage Convention 1989. In addition, the CMI has also prepared draft Conventions for consideration jointly by IMO and UNCTAD, including the Maritime Liens and Mortgages Convention 1993 and the Arrest Convention 1999.

**Why a new Convention is needed**

1) To solve certain practical problems.

There are numerous Court cases illustrating the practical problems and these include:

- The purchaser may encounter difficulty in deleting the vessel acquired at judicial sale from her previous register and then registering the vessel in a register of his choice;
- The purchaser’s title to the vessel may be challenged by the previous shipowner in another jurisdiction, resulting in the vessel being arrested;
- The purchaser may be called upon in another jurisdiction to defend historical claims which arose before the judicial sale, whether or not secured by a maritime lien or mortgage.

2) To fill the gap left by the MLM Convention 1993.

MLM has unfortunately not been widely accepted. Secondly, it is far more narrow in scope than the new Convention which extends to other types of maritime claims, such as those for loss of or damage to cargo or for unpaid supplies to ships. Further, there is a necessity to deal expressly with recognition of foreign judicial sales.

3) To satisfy the needs of the Maritime industry and ship finance.

The issues and concerns are spelt out in the Preamble to the draft Convention and I quote:

“RECOGNISING that the needs of the Maritime industry and ship finance require that the Judicial Sale of Ships is maintained as an effective way of securing and enforcing maritime claims and the enforcement of judgements or arbitral awards or other enforceable documents against the Owners of Ships;

CONCERNED that any uncertainty for the prospective Purchaser regarding the international Recognition of a Judicial Sale of a ship and the deletion or transfer of registry may have an adverse effect upon the price realised by a Ship sold at a Judicial Sale to the detriment of interested parties;
CONVINCED that necessary and sufficient protection should be provided to Purchasers of Ships at Judicial Sales by limiting the remedies available to interested parties to challenge the validity of the Judicial Sale and the subsequent transfers of the ownership in the Ship;
CONSIDERING that once a Ship is sold by way of a Judicial Sale, the Ship should in principle no longer be subject to arrest for any claim arising prior to its Judicial Sale;
CONSIDERING further that the objective of Recognition of the Judicial Sale of Ships requires that, to the extent possible, uniform rules are adopted with regard to the notice to be given of the Judicial Sale, the legal effects of that sale and the de-registration or registration of the Ship”.

The substance of the Draft Convention
I think you will find that the draft Convention deals with these issues in a clear and straightforward manner. It has the second great merit that it is only just over seven pages long!
Art. 1 contains 22 definitions and I will refer now only to definition 8:
“‘Judicial Sale’ means any sale of a Ship by a Competent Authority by way of public auction or private treaty or any other appropriate ways provided for by the law of the State of Judicial Sale by which Clean Title to the Ship is acquired by the Purchaser and the proceeds of sale are made available to the creditors”.
Art. 2 sets out the Scope of Application. A State Party commits to recognise a Judicial Sale in another State, whether a State Party or not but has the right under Art. 9 to restrict recognition to Judicial Sales in State Parties.
Art. 3 regulates the Notice of Judicial Sale. The key points in Art. 3 are these:
First, the notice of judicial sale should be given to the listed addressees, including the registrar of the ship’s register in the state of registration.
Secondly, the required notice is to be given at least 30 days prior to the judicial sale and is to contain certain minimum information.
Thirdly, the required notice is to be in writing and is to be given in such a way as not to frustrate or significantly delay the proceedings concerning the judicial sale.
Art. 4, Effect of Judicial Sale, is both short and clear and I quote para 1:
“Subject to:
(a) The ship being physically within the jurisdiction of the State of Judicial Sale, at the time of the Judicial Sale; and
(b) The Judicial Sale having been conducted in accordance with the law of the State of Judicial Sale and the provisions of this Convention, any title to and all rights and interests in the Ship existing prior to its Judicial Sale shall be extinguished and any Mortgage/Hypotheque or
Charge, except as assumed by the Purchaser, shall cease to attach to the Ship and Clean Title to the Ship shall be acquired by the Purchaser”.

Clean title, of course, is the very crux of the Convention.

Art. 5 provides for the issuance of a Certificate of Judicial Sale. Subject to the conditions set by the State of Judicial Sale and by the Convention being met, the Purchaser gets a Certificate which has important effects.

Art. 6 deals with the Deregistration and Registration of the Ship. Basically, the Article 5 Certificate is the trigger to enable the Purchaser to have the Ship deregistered and then registered in the jurisdiction of his choice.

Art. 7 (Recognition of Judicial Sale) goes to the heart of the matter and is structured in this way:

– if the Purchaser produces the Article 5 Certificate then the State Party must recognise the Judicial Sale, subject only to Article 8.

– If the vessel is arrested then the arrest must be set aside once the Article 5 Certificate is produced. The only exception is where the arrest is by an “Interested Person” who can bring himself within Article 8. “Interested Person” is defined as “– the Owner of a Ship immediately prior to its Judicial Sale or the holder of a registered Mortgage/Hypothèque or Registered Charge attached to the ship immediately prior to its Judicial Sale”.

– legal proceedings seeking to challenge the Judicial Sale can only be brought in a competent Court of the State of Judicial Sale.

– none other than an Interested Person can challenge the Judicial Sale and the competent Court of the State of Judicial Sale shall only entertain an action by an Interested Person.

– the Art. 5 Certificate is conclusive absent proof of a circumstance within Art. 8.

Art. 8 sets out: Circumstances in which Recognition of a Foreign Judicial Sale may be Suspended or Refused. Importantly, the only person who can challenge the Judicial Sale is an Interested Person and the only basis to do so is in Art. 8.

The Article 8 grounds are these:

– If the Ship was not physically within the jurisdiction of the State of Judicial Sale at the time of the Judicial Sale.

– If an Interested Person has brought proceedings and a competent Court of the State of Judicial Sale has suspended or nullified the Judicial Sale.

– If recognition would be manifestly contrary to the public policy of the State Party.

Finally, Article 10 (I have referred to Article 9 above) deals with Relations with other International Instruments. It states in the clearest of terms that nothing in this Convention shall derogate from any other basis for the recognition of judicial sales under any other bilateral or multilateral Convention, instrument or agreement or principle of comity.
The CMI Draft Convention on recognition of foreign judicial sales of ships, by J. Lux

A summary of the work to date

Let us look briefly at the history of the draft Convention and the extensive discussion which has taken place.

To summarise, the project was conceived in 2008. The CMI International Working Group comprised 11 members from 11 different jurisdictions. A comprehensive questionnaire was drafted and sent out to all CMI members. In the seven years between 2008 and 2014 there have been intensive meetings and discussions in Buenos Aires, Oslo, Beijing, Dublin and Hamburg and a total of five drafts before arriving at the final version approved by the CMI Plenary in Hamburg in June 2014. At the Plenary 24 National Maritime Law Associations voted in favour of the draft Convention, there were 2 abstentions and non-against.

I have already referred to the long and close relationship between IMO and CMI. In January 2015 the International Working Group (IWG) was tasked to prepare an ‘information paper’ for submission to the IMO Legal Committee for inclusion in the agenda of LEG 102nd Session (document LEG 102/11/2) which took place in April 2015.

In fact, a more extensive pack was delivered by CMI to IMO in preparation for the Legal Committee session comprising:

– The information paper;
– The draft Convention;
– The paper presented by the Chair of the IWG, Henry Hai Li, at the CMI Conference in Athens in 2008;
– The paper presented by the former Secretary General of CMI, Nigel Frawley, setting out the long-standing relationship between IMO and CMI.

Henry Hai Li (Chair of the IWG), Jonathan Lux (Rapporteur) and Patrick Griggs (CMI representative to IMO) attended IMO LEG 102nd Session and presented the draft Convention and answered far-reaching questions from a large number of national delegations. It became apparent that, for the draft Convention to be taken up by the IMO, the following must be attended to:

– one or more State sponsors will be needed to sponsor or co-sponsor the proposal to the IMO Legal Committee;
– the IMO Legal Committee remains to be convinced that it is indeed within its competence to develop the draft instrument into a Convention; and
– a number of delegates expressed concern that the “compelling need” for a new Convention has not yet been fully established.

These issues are being addressed and will no doubt be commented on by my Co-Rapporteur, Andrew Robinson, who will address you on “the way forward”. 
Conclusions

I hope to have explained the issues which gave rise to the need for a new Convention, the manner in which the draft CMI Convention deals with those issues and the steps which have been taken since approval of the draft Convention by the CMI. Whilst there may still be some way to go before the draft Convention is adopted by the IMO and/or by some other international organisation, I confidently predict that we have at least reached the end of the beginning and certainly not the beginning of the end!
THE CMI DRAFT CONVENTION ON RECOGNITION OF FOREIGN JUDICIAL SALES OF SHIPS – MOVING FORWARD WITH THE IMO

ANDREW ROBINSON *

Introduction
Since November 2015 the IWG has been preparing a proposal for submission to the IMO Legal Committee on the Draft Convention on Recognition of Foreign Judicial Sales of Ships [“the Draft Convention”]. The proposal is to be considered by the IMO Legal Committee at the IMO LEG Session 103 during 7 – 10 June 2016.

Preparations
A first draft was prepared for consideration by end-December in accordance with the IMO Guidelines on the Organisation and Method of Work of the Legal Committee dated 11 May 2012. In contrast to previous submissions, the draft included:
- A broad judicial commentary on the compelling need for a suitable international instrument dealing with judicial sales;
- A copy of the Draft Convention.

At the same time the IWG, with the assistance of the President of the CMI, Stuart Hetherington, and the Chairman of the IWG, Professor Henry Hi Li, the quest for suitable co-sponsors (in addition to the CMI) began.

As the CMI is a non-governmental organization, it does not have the capacity to submit any formal proposal to be included into the agenda of the IMO LEG sessions. It was therefore necessary for the IWG to find and convince IMO member states to co-sponsor the CMI’s proposal.

By the end of March the IWG were most encouraged by the enthusiasm of China and Korea (Republic of Korea) in agreeing to co-sponsor the CMI’s proposal to be submitted to the IMO LEG Session 103.

In addition, the IWG has spent some time gathering further information and/or materials which would further demonstrate the so-called “compelling need” which, as has already been explained, is an area where the IMO have

* Director at Norton Rose Fulbright and occasional Rapporteur to the CMI International Working Group on Recognition of Foreign Judicial Sales of Ships
required further input from the CMI.

The IWG, after several months’ hard work of drafting, discussing and revising both the Proposal and the Draft Convention, finalized the proposal paper to be submitted to the IMO LEG Session 103. The paper was firstly drafted by the IWG’s Rapporteurs and was discussed and finalized within the IWG with significant important contributions from the CMI President Stuart Hetherington. It is also important to record that useful and valuable assistance was received from Mr. Frederick Kenney and Dr. Dorota Lost-Siemsinska (both of whom are officers of the IMO Legal Committee) so that it met with the fairly stringent IMO requirements.

The Proposal Paper was sent by CMI President to IMO Legal Committee on 30 March 2016 which was within the deadline. The IMO have confirmed that the paper has been included into the agenda of IMO LEG Session 103 as document LEG 103/13.

The IWG have also made preparations for Professor Li and Jonathan Lux to attend the IMO LEG Session 103, not only to speak for the CMI but also to provide necessary technical support to the co-sponsors, i.e. China and Korea.

In addition the IWG has made preparations to conduct a lunch break presentation during the IMO LEG Session 103 to introduce the CMI’s proposal, to provide in details the rationale behind the need for the Draft Convention, and to answer questions the delegates may have to raise;

New York and beyond

During the New York conference the IWG members will encourage and urge the CMI’s member associations to try their best to convince their respective governments to support the CMI proposal.

Having realized that lobbying governments is now the key, the IWG shall continue their efforts to solicitor support from the IMO member states, with the hope that the joint proposal will be accepted and/or approved at the forthcoming IMO LEG Session 103 in June.
LIABILITY FOR WRONGFUL ARREST

A report on this study and on the activities of the IWG,
by Giorgio Berlingieri

Summary of NMLAs answers to the CMI questionnaire,
by Aleka Sheppard
LIABILITY FOR WRONGFUL ARREST
A REPORT ON THIS STUDY AND ON THE ACTIVITIES OF THE IWG

GIORGIO BERLINGIERI

The 1952 and 1999 Arrest Conventions do not assist much with regard to providing uniform rules on the test for wrongful arrest and for the entitlement to damages.

In fact, while art. 6 of the 1952 Convention merely contains a general reference to the law of the State where the arrest is made, art. 6 of the 1999 Convention goes only a bit further and gives the Court powers to impose security and jurisdiction to determine the extent of liability, if any, of the claimant, for loss or damage as a consequence of the arrest having been wrongful or unjustified or of excessive security having been demanded and provided.

From the Preparatory Works of the 1999 Convention it appears that an arrest is unjustified when there is no doubt about the solvency of the debtor as it would be the case if he owns many ships. But what is the standard for establishing when an arrest is wrongful and entitles to damages? Is the dismissal of the claim sufficient and liability is therefore strict, or either bad faith or gross negligence is required, or only lack of ordinary diligence should be proved?

The idea of this study started at the CMI Conference in Hamburg after Dr. Aleka Mandaraka-Sheppard made a presentation titled “Wrongful arrest of ships: a case for reform”. There the position on wrongful arrest in English law is outlined and is compared with other common law and some civil law jurisdictions. The author makes a plea for a reform of English law or, more importantly, reform of the law at an international level.

The test for wrongful arrest in English law is based on the decision of the Privy Council of 1858 in the “Evangelismos”, relating to a casualty in the Thames at night when a ship navigating in the river collided with a ship at

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1 CMI website - Work in progress - Study relating to liability for wrongful arrest - Documents of interest.
2 On the basis of her article published in JIML (2013) vol 19, issue 1, pp 41-59; see CMI Yearbook 2014, 282.
anchor but continued her course. Boats from the ship at anchor, the “Hind”, made searches of the other ship and the following day found a ship in a dock, the “Evangelismos”, which was believed to be the ship which had collided with the “Hind” as she had damages to her bow.

The “Evangelismos” was arrested but it was discovered that she was not the ship which collided with the “Hind”. Thereafter the owners of the “Evangelismos” claimed damages for wrongful arrest during a period of nearly three months. However the claim for wrongful arrest was dismissed on the basis that the arrest was made in the *bona fide* belief that the “Evangelismos” was the colliding ship.

That was confirmed on appeal by the Privy Council, which held that the identity of the colliding ship was not proved but there were grounds to believe that the “Evangelismos” was the one which collided and the owners of the Hind, in order to be entitled to damages, had the burden of proving that the arresting party acted with *mala fides* or *crassa negligentia*.

Apparently the test of the “Evangelismos” is applicable also in other common law countries.

In certain civil law countries the arresting party is faced with strict liability if the claim fails on the merits and there would be no need to prove bad faith or gross negligence. In Italy the test is that the arresting party may be held liable for damages by the Court holding on the merits if it is proved that he acted without ordinary diligence, the dismissal of the arrest claim not being sufficient. However damages may already be adjudged by the Court of the arrest if proof of bad faith or gross negligence is given, which are evidenced also by a disproportion between the size of the claim and that of the arrest.

The CMI therefore considered to look at the subject by constituting an IWG, with the initial task of preparing a Questionnaire aiming at inquiring on how wrongful arrest is regulated in the various jurisdictions.

With Aleka Mandaraka-Sheppard as Rapporteur, the IWG included the other Vice President of the CMI Christopher O. Davis, the Past President of the CMI Karl-Johan Gombrii and Ex.Co. member Ann Fenech.

The Group started drafting a Questionnaire and much debate took place on the various questions to be put to the NMLAs.

Eventually the CMI Questionnaire was finalized and circulated shortly before the Istanbul Colloquium.

In the CMI website, under “Work in progress”, a Section was devoted to the “Study relating to liability for wrongful arrest”, to list the members of the IWG and to contain certain documents including the Questionnaire, the correspondence with the Presidents of the NMLAs, the Responses to the Questionnaire and the Preparatory Works of articles 6 of the 1952 and of the 1999 Arrest Conventions.

Whilst the National Associations were commencing to answer the
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Questionnaire, the IWG was joined by Sir Bernard Eder, who has been campaigning for some 30 years to change the law relating to wrongful arrest in England.

He is convinced, as Aleka Mandaraka-Sheppard, that the English Courts should revise the test in the "Evangelismos" or, at the very least, that the arrestor should be required to provide a cross-undertaking in damages (if necessary fortified by proper security) as a pre-condition of any arrest in the same way as the grant of an ordinary injunction.

Also Sir Bernard Eder wrote an article: "Wrongful Arrest of Ships: A time for change". That was a speech for the 2013 lecture at the Tulane University. Interestingly enough, the article is followed by a reply from Professor Martin Davies, the Director of the Tulane Maritime Law Center, and by a rejoinder from Sir Bernard.

Incidentally, the position under U.S. law seems to be that the mere dismissal of the arrest claim is not sufficient to render the arresting party liable in damages. However a party, whose ship has been wrongfully arrested, may be entitled to damages but, as in U.K. law, proof of bad faith, malice or gross negligence is required.

There has been quite a positive reaction to the Questionnaire as 33 National Associations have answered so far: Australia and New Zealand, Brazil, Canada, Chile, Colombia, Croatia, Ecuador, Finland, France, Germany, Greece, Hong Kong China, Ireland, Israel, Italy, Japan, Denmark, Democratic People's Republic of Korea, Malta, Mexico, Netherlands, Nigeria, Norway, Panama, Poland, Romania, Russian Federation, Senegal, South Korea, Spain, Turkey, Ukraine, United Kingdom, United States of America.

The responses to each of the questions were summarised by the Rapporteur and the Synopsis is presented in alphabetical order of the countries which responded to the CMI Questionnaire by 10 March 2016. In addition, the responses are set into two tables: the first table presents a shorter summary of the answers to the CMI Questionnaire per question and country and the second table sets the answers out in a sequential order of the questions.

A preliminary review of the responses has been made in order to see how great differences exist amongst the domestic laws of the States to which the National Associations belong, for the purpose of assessing the possibility of establishing a uniform law on liability for wrongful arrest.

It would appear that, although the national regimes vary considerably,
there is a significant number of States with a certain degree of uniformity, or whose rules do not vary too considerably.

In fact most National Associations, albeit with different terminology, have stated that under their law the arrestor is liable for damages caused by the arrest if he has acted with gross negligence.

Depending also on how the debate will develop at the Session in New York, a further more in depth comparison between the national regimes could be made, also in view of the fact that additional responses to the Questionnaire are expected.

The IWG, possibly turned into an International Sub-Committee to allow that all National Associations have voice to the discussion, could then draw up a tentative draft uniform set of rules on liability for wrongful arrest, to be incorporated either into a Protocol to the 1999 Arrest Convention or into a model law or other instrument for their acceptance or implementation by national laws.
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STUDY RELATING TO LIABILITY FOR WRONGFUL ARREST

Summary of NMLAs answers to the CMI questionnaire

By the Rapporteur\(^1\) to the CMI IWG

Aleka Sheppard

[Where there are [ ] in the text is the Rapporteur’s comment in an attempt to explain the meaning of the particular answer]

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\(^1\) I acknowledge my gratitude to my young assistants: Noe Reiff, French lawyer, and to Agapi Terzi, Greek lawyer, for their kind assistance in producing the first draft of some parts of this document.
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3. Under your national law, if a vessel is arrested pursuant to a decision by a court of first instance, but the arrest is subsequently repealed by an appeal court (without deciding on the merits of the claim): ........................................................................................................................................... 30
   (a) Would the arrestor be liable in damages for the consequences of the arrest, and, if Yes, in what circumstances? .......................................................................................................................... 30
   (b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required? ................................................................................................. 30
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   (b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part
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           (iii) For losses incurred as a result of the owner being unable to provide the excessive security? 37

   (b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part
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   a) Can the arrest be considered wrongful as a result, so as to attribute liability to the arrestor
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   a) In case of mere rejection of the claim, the arrester could be held liable only for the payment of loss of suit expenses (i.e. court expenses and lawyers’ fees up to 20% of the amount of the claim. General damages incurred due to wrongful arrest would be dealt with under civil liability rules (tort). These damages will be sought through a separate claim. ................................................................. 25
   C. Canada: ................................................................................................. 26
   D. Chile: ................................................................................................. 26
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   Y. Senegal: .................................................................................................. 29
   Z. Spain: ...................................................................................................... 29
   AA. Turkey: .................................................................................................. 29
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3. Under your national law, if a vessel is arrested pursuant to a decision by a court of first instance, but the arrest is subsequently repealed by an appeal court (without deciding on the merits of the claim): ................................................................. 30
   A. Australia and New Zealand: ................................................................. 30
   B. Brazil: .................................................................................................. 30
   C. Canada: .............................................................................................. 30
   D. Chile: .................................................................................................. 30
   E. Colombia: ........................................................................................... 30
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   G. Ecuador: ............................................................................................. 31
   H. Finland: ............................................................................................. 31
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4. If the arrest claim was not against the owner of the ship and could not be enforced against that ship under the law of the state where the vessel was arrested: ............................................. 33
   A. Australia and New Zealand: ................................................................. 33
   B. Brazil: .................................................................................................. 33
   C. Canada: .............................................................................................. 33
   D. Chile: .................................................................................................. 34
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5. If the amount of the arrest claim was grossly exaggerated: ................................. 37
A. Australia and New Zealand: ............................................................................. 37
B. Brazil: ............................................................................................................. 37
C. Canada: ......................................................................................................... 37
D. Chile: .............................................................................................................. 38
E. Colombia: .................................................................................................... 38
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6. If the person allegedly liable for the arrest claim is largely solvent and it is possible to enforce judgements or arbitration awards against him, e.g. he owns many ships (not under separate corporate veils), which call regularly at ports where enforcement can take place: ..... 41

a) Can the arrest be considered wrongful as a result, so as to attribute liability to the arrestor under your national law?.............................................................................. 41

b) For liability under (a) if any, would proof of negligence, bad faith or gross negligence on part be arrestor be required?.................................................................................... 41

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7. Are there other circumstances in which, under your national law, an arrestor can be held liable in damages for the arrest of a ship? ........................................................................... 44
8. **Does your national law provide for a penalty or other sanction to be levied upon the arrester, separate and distinct from any damages, if he is held liable for the arrest?**

A. Australia and New Zealand: ................................................................. 47
B. Brazil: ................................................................................................. 47
C. Canada: ............................................................................................... 47
D. Chile: .................................................................................................... 47
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9. Would a court in your country, seized with a claim for damages for the arrest of a ship in another country, apply the law of the country of arrest (lex forum arresti) in that regard, or would it apply its own substantive national law (lex fori), or would it apply the substantive law applicable pursuant to the general international private law rules of its country? 49

A. Australia and New Zealand: 50
B. Brazil: 50
C. Canada: 50
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ANSWERS TO THE ABOVE QUESTIONS BY INDIVIDUAL NMLAs

1. INTERNATIONAL CONVENTIONS:

1. a) Please advise which, if any, of the following Conventions your jurisdiction is a party to and has given effect to in its legislation:
   
i) Arrest Convention 1952
   ii) Arrest Convention 1999
   iii) Maritime Liens and Mortgages Convention 1926

2. iv) Maritime Liens and Mortgages Convention 1993
   b) If none of the above is made part of your national law, or in any event, what are the grounds on which a vessel can be arrested in your country?

   A. Australia and New Zealand:
   
a) Australia and New Zealand are not parties to any of the listed Conventions.

   A creditor can arrest a vessel in Australia on the grounds of Articles of the Australian Admiralty Act 1988 (Cth) (AUS Act) and in New Zealand on the grounds of Articles of the Admiralty Act 1973 (NZ Act).

   B. Brazil:
   
a) Brazil is a party to the Maritime Liens and Mortgages Convention 1926.

   b) In addition to the Maritime Liens and Mortgages Convention 1926, Brazil Commercial Code and Brazilian Civil Procedure Code provide the rules for the arrest of vessels in Brazil.

   C. Canada:
   
a) Canada is not party to any of the listed conventions, but has incorporated various aspects of the listed conventions into its national law.

   b) A warrant for arrest of a ship is available to secure a claim recognized under Canadian Maritime Law as defined and delineated in Federal Courts Act, R.S.C. 1985, c. F-7 as amended, (see sections 2, 22 and 42).

   D. Chile:
   
a) Chile is not a party to any of the listed Conventions.

   b) A creditor can arrest a vessel under Chilean law on the grounds of Articles of the Code of Commerce (C. Com).
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E. **Colombia:**

a) None.


F. **Croatia:**

Croatia is a party to the Arrest Convention 1952, which applies to ships flying the flag of a contracting state. For other ships the provisions of the **Maritime Code 2014** applies. Some of the provisions of this Code are very similar to the respected provisions of the 1952 Convention. In addition, some procedural issues are governed by the Enforcement Act 2012.

G. **Ecuador:**

Maritime Warranties (Maritime Liens and Mortgages) and Arrest of Ships – Decision 487 – Andean Community of Nations CAN (February 5th 2001).

H. **Finland:**

a) Finland has incorporated most of the provisions of the Arrest Convention 1952 into its **maritime code (FMC)** (Chapter 4).

I. **France:**

a) France is party to the Arrest Convention 1952 and the Maritime Liens and Mortgages Convention 1926.

In addition, if a vessel is not flying the flag of a contracting State of the 1952 Arrest Convention, she could be arrested either on the grounds of this Convention or according to the general rules of the article L. 511-1 of the **Code of Enforcement of Civil Proceedings** under which any claimant who has prima facie claim can apply to the Court for a protective attachment of his debtor’s assets, if he proves that recovery of the claim is in jeopardy.

J. **Greece:**

a) Greece is a party to the Arrest Convention 1952.

b) In cases where the Arrest Convention 1952 is not applicable, vessels may be arrested, on the grounds of Articles 682 seq. and 707 seq. of the Greek Code on Civil Procedure (GCCP), for any type of claims, provided that the claimant can show on a prima facie basis that:

- It has a good claim; and

- There is a risk that the claim will not be satisfied unless security is granted or urgent circumstances exist making necessary the arrest of a vessel as security for the claim.

K. **Hong Kong:**

The Arrest Convention 1952 was extended to Hong Kong in 1963 and still continues to apply. The High Court Ordinance HCO (ss. 12A and 12B) give effect to the Convention although not in identical wording.
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I. **Ireland:**

a) Ireland is a party to the Arrest Convention 1952.

b) The ships of both Convention and non-Convention States can be arrested in Ireland for maritime claims enumerated in art. 1 of the 1952 Convention and not otherwise. In addition, a "sister" ship registered in a Convention State may be arrested in Ireland.

M. **Israel:**

a) Israel is not a party to any of the listed Conventions.

b) The admiralty court’s authority today is derived from the British Admiralty Court Act 1861, the Admiralty Rules 1883 and the Israel Maritime Court Law 1952.

N. **Italy:**

a) Italy has ratified: the Arrest Convention 1952 with the reservation to apply the national law to maritime claims under art. 1 (o) and (p) and not to apply the first paragraph of art. 3 under art. 1(q). It has also ratified the Maritime Liens and Mortgages Convention 1926 with the reservation to apply its national law in respect of the extension of maritime liens to the vessel’s appurtenances in addition to the so-called "accessories" of the art. 4.

O. **Japan:**

a) Japan is not a party to any of the above mentioned Conventions.

b) Due to absence of a particular legal framework in the Japanese admiralty jurisdiction, arrest of vessels is regulated by domestic enactments, like the Civil Preservation Act and the Civil Execution Act which apply generally to all cases.

Under Japanese Law the available types of arrest are the following:

i) "Provisional Attachment" to preserve the property for the enforcement of judgment.

ii) "Public Aution to execute Security Rights" (like Maritime Liens and Mortgages) and

iii) "Compulsory Execution" which is an attachment leading to the sale of the attached property through public auction in order to satisfy the claim via the sale.

iv) Arrest under the "Lien on movables", according to Article 321 of the Japanese Civil Code.

P. **Malta:**

a) Malta is not a signatory to any of the listed conventions. The legal framework regulation for arrests in rem is found in Articles 742B – 742D of the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta (the COCP).

b) Under Maltese law, a creditor may seek to arrest a ship:

- **In personam:** When Maltese courts have in personam jurisdiction over the owner, and when the claim has a strong connection with Malta. Maltese courts can order the arrest of the person (on the grounds listed in Article 742(1) of the COCP), as security for a debt owed by the owner of the vessel.
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- In rem: an arrest in rem may only be brought if the claim falls under one of the grounds listed under article 742B of the COCP, based upon those found in Arrest Conventions of 1952 and 1999.

Q. Mexico:

Mexico is not a party to any of the listed Conventions, but Arrest Convention 1952 and Maritime Liens and Mortgages Convention 1993 are incorporated in Mexico’s internal legislation.

R. Netherlands:

a) Netherlands is a party to the Arrest Convention 1952. At the ratification, Netherlands reserved the right not to apply the Convention to the arrest of ships for claims enumerated in paragraph (o), (p) and (q) of article 1.

b) Netherlands has a civil law tradition, therefore the (in rem) arrest is not known. Thus the term “attachment” of a vessel is used.

S. Nigeria:

a) Provisions of the Arrest Convention 1952 are incorporated to the Admiralty Jurisdiction Act 2004 (“AJA”).

T. Norway:

Norway is a party to the Arrest Convention 1952, party to the Arrest Convention 1999 and party to the Maritime Lines and Mortgages Convention 1993.

U. Panama:

a) Neither a party nor a signatory of any of the Conventions.

b) The relevant statute is contained in law No. 8 of 1982 and its amendments, the CMP. Arrest can be sought for i) security for the claim ii) to grant jurisdiction to the Court iii) for the enforcement of maritime liens.

V. Poland:

a) Poland is a party to the Arrest Convention 1952 and the Maritime Liens and Mortgages Conventions 1926.


W. Romania:

a) Romania is a party to the Arrest Convention 1952 and to the Maritime Liens and Mortgages Convention 1993.

b) The grounds on which a vessel can be arrested in Romania are the provisions of the Arrest 1952 Convention along with articles 959 to 968 of the Romanian Civil Procedural Code.

X. Russia:
a) Russia is a party to the Arrest Convention 1952 and the Maritime Liens and Mortgages Convention 1993.

b) In accordance with the provisions of the Arrest Convention 1952, a ship may be arrested only if a claimant has a valid maritime claim. An arrest in Russia would be carried out in accordance with the rules provided by the Code of Civil Procedure or the Arbitration Procedural Code of the Russian Federation (APC).

Y. Senegal:
a) Senegal has ratified the Arrest Convention 1952.

Z. Spain:
a) Spain is a party to the Arrest Convention 1999 and the Maritime Liens and Mortgages Convention 1993.

b) Arrest of ships in Spain is ruled by articles 470 and seq. of the Spanish Shipping Act (the SSA) which refer to the provisions of the Arrest Convention 1999 and to the Civil Procedure Act (the CPA).

AA. Turkey:
a) Turkey is a party to the Maritime Liens and Mortgages Convention 1926.

b) Arrest of ships in Turkey is ruled by the 5th book of the 6102 Turkish Commercial Code (TCC).

BB. Ukraine:
a) Ukraine is a party to the Arrest Convention 1952 and to the Maritime Liens and Mortgages Convention 1993.

CC. United Kingdom:
The UK is a party to the Arrest Convention 1952 (the substance of the Convention is reflected in ss. 20 and 21 of the SCA 1981.

DD. United States:
a) The U.S. is not a party to any of the listed conventions.

b) - Insofar as arrest of a vessel is concerned, U.S. law (Supplemental Admiralty Rule C to the Federal Rules of Civil Procedure) requires the claimant to have a valid maritime lien (also known as an in rem right) against the vessel at the time the action is filed.

- Insofar as attachment of a vessel is concerned, U.S. law (Supplemental Admiralty Rule B to the Federal Rules of Civil Procedure) requires the claimant to have a valid maritime claim against the vessel’s owner personally (as opposed to an in rem claim against the vessel).

II. QUESTIONS RELATING TO WRONGFUL ARREST

1. To what extent is a claimant required under your national law to provide security in order to obtain an order for arrest or, subsequently, to maintain an arrest?
A. **Australia and New Zealand:**

There is no such requirement for counter-security under Australian and New Zealand laws.

B. **Brazil:**

There is no such requirement under Brazilian Law, but the judge has discretion, when he is considering the plausibility of the claim and the risk of losses to the opposing party. For example, should a foreign company without assets in Brazil file a claim to arrest a vessel, the judge may request security from the claimant - corresponding to between 10% and 20% of the claimed amount - to guarantee the payment of court’s costs and lawyer fees.

C. **Canada:**

There is no such requirement under Canadian law, however at any stage in the procedure a claimant might be called upon to provide a security.

D. **Chile:**

Security for wrongful arrest depends on the judge’s discretion.

E. **Colombia:**

The arresting could be asked by the Tribunal to provide counter-security (art.50 Decision 487, 2000).

F. **Croatia:**

On an application for arrest, as a provisional measure, the debtor has the burden of providing prima facie evidence of his claim and the probability of a danger that without such a measure the debtor may prevent enforcement of the claim. It is presumed that such a danger exists if the claim has to be executed abroad (art. 344 Enforcement Act 2012).

However, the court may order an arrest at the claimant’s application, even if he has not shown, prima facie, that the claim and the probability of the danger (mentioned above) exist, if the claimant provides counter-security for possible damages to the debtor, within a time limit set by the court (art.349 Enforcement Act 2012). If the claimant does not provide the security deposit within the set time limit, the court shall reject the application for the arrest. Furthermore, depending on the circumstances of the case, the court may at the debtor’s application, require a deposit to be provided by the claimant even when the claimant has shown a prima facie case of the existence of the claim and the danger. Failing to provide a security, within a set time limit, the court shall suspend the proceedings and set aside the actions related to the arrest. However, the debtor’s application for counter-security does not postpone the implementation of the arrest until the court reaches a decision on the debtor’s application. Finally, the claimant always has to pay an advance related to the costs of the arrest procedure.

G. **Ecuador:**

No obligation for counter security is provided in the legislation. However, the Tribunal has discretion.

H. **Finland:**

For a vessel to be arrested, the arresting needs to provide security, usually a bank guarantee (its amount is decided by the bailiff and is usually considerable), to cover the costs and economic losses in case the...
arrest is proved unnecessary at a later stage. A supplemental guarantee is also usually demanded from one or two persons.

I. **France:**
There is no such requirement under French law but the possibility is not excluded but it is very rare in practice.

J. **Greece:**
There is no such requirement under Greek law, unless the Court requires the claimant to do so ex officio or at the request of the owner of the vessel under arrest and at its discretion.

K. **Hong Kong:**
Counter security is not required.

L. **Ireland:**
[The answer is not related to counter-security for wrongful arrest but it states that an undertaking is required to indemnify the Admiralty Marshall in respect of charges and expenses.]²

M. **Israel:**
No counter-security is required.

N. **Italy:**
Under art. 669 of the Italian Code of Civil Procedure (C. C. P.), the court has discretion to require security for the settlement of any damages suffered in case of wrongful arrest taking into consideration all the material circumstances.

If the warrant is issued subject to providing security, the arrest cannot be enforced unless the security is provided within a time limit. If the security is ordered following the arrest, failure to provide it can result in the lifting of the arrest.

O. **Japan:**
The Japanese Law requirements for security in order to obtain and maintain an arrest depend on the type of the attachment as mentioned on answer one. Consequently, counter security must be provided by the claimant to issue a writ of arrest in case of Provisional Attachment. The amount of security is in the region of one third of the value of the claim. On the contrary, there is no such requirement for counter- security inasmuch as the other instances of arrest are concerned.

P. **Malta:**
There is no requirement under Maltese Law on the claimant to provide security as a prerequisite to obtain an order for arrest. The court may, on good cause being shown by the defendant (i.e. if there is good cause that the warrant of arrest may be unlawful), order the claimant to provide “sufficient security

² Comments in […] are of the rapporteur
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(not less than £11,600) for the payment of penalties, damages (which may include the expenses necessary to maintain the vessel and crew) and interest”.

Q. Mexico:
Security must be provided to obtain an arrest order and the amount is entirely upon the Judge’s discretion.

R. Netherlands:
Attachment can be ordered provided security is put up (for the loss that may be caused by the attachment), up to an amount to be determined by the judge. However, in practice this is not applied very often and the shipowner would have better chances to obtain counter-security if he applied for it.
Ordinarily, a claimant seeking an arrest order must be able to establish counter-security to satisfy a wrongful arrest counter-claim.

S. Nigeria:
Security for costs.

T. Norway:
The Court has discretion to decide that the claimant provide counter security for potential liability claims (NMC s.33-3).

U. Panama:
Security only for the Marshall’s expenses.

V. Poland:
Polish Law provides that the Court may require counter-security (bail), as a condition of the arrest, from the claimant in case of wrongful-arrest. In practice this almost never happens.
However, after the vessel is arrested, the debtor may apply to the court for sufficient bail to be provided by the claimant.

W. Romania:
In order to obtain an order of arrest, a claimant is required to provide security, fixed by the court (generally 10% of the value of the claim, but no more than 20%) and will need to be placed in cash. In cases, in which there is no evidence of a commercial relationship between the creditor and the debtor, the amount of the security will be fixed at 50% of the claimed amount and will take the form of a bank letter of guarantee.

X. Russia
Under Russian law, a claimant is requested to provide security in an amount and in terms determined by the court to cover any damages that may arise due to wrongful arrest. A claimant must confirm the posting of such security. If not, the court may, (after having assessed the case) leave the application for the arrest in abeyance until the counter security is put up.

Y. Senegal:
**Liability for Wrongful Arrest**

The arrester provides security: a) when vessel in question flies Senegalese flag and b) the claimant/arrester is a foreign national.

**Z. Spain:**

A claimant must post security or bond for at least 15% of the amount of the maritime claim, subject to the discretion of the court to require a higher security.

**AA. Turkey:**

Yes, a claimant should provide security in the amount of 10,000.00 SDR.

**BB. Ukraine:**

The Court may require the claimant to provide security for potential damages to the defendant which may result from wrongful arrest or excessive bail or security demanded for the claim. The amount should not exceed the amount of his claim.

**CC. United Kingdom:**

No court rules or other rules require the arrester to provide security as a condition to obtaining or maintaining an arrest (other than an undertaking to the Admiralty Marshall to pay his charges).

**DD. United States:**

A claimant is not required to provide security (except “security for costs” for the Marshall’s fees and expenses). Generally, Marshalls require in the range of $5,000 to $10,000.

2. **Under your national law, if the claim for which a vessel has been arrested has subsequently been rejected by the court hearing the case on its merits, would the arrester be liable by reason of:**

   a) The mere rejection of the claim?
   b) Or would proof be required about the arrester's:
      i) awareness/knowledge that his claim had no foundation, or
      ii) negligence in bringing such a claim, or
      iii) bad faith or gross negligence or, otherwise, malicious bringing of such a claim?

   **A. Australia and New Zealand:**

   a) No

   b) Under Australian law, the claimant will be held liable if he acted “unreasonably” and without a good cause.

   Proof of bad faith or gross negligence is required in New Zealand.

   **B. Brazil:**

   a) In case of mere rejection of the claim, the arrester could be held liable only for the payment of loss of suit expenses (i.e. court expenses and lawyers’ fees up to 20% of the amount of the claim). General
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damages incurred due to wrongful arrest would be dealt with under civil liability rules (tort). These damages will be sought through a separate claim.

b) There is no specific provision in respect to wrongful arrest under Brazilian Law but general principles of negligence apply with regard to proof and the test. Should the owner of the vessel be able to prove that the arrest was filed in bad faith, or due to gross negligence or malice, the arrestor could be held liable to pay loss of suit expenses and also a penalty for bad faith litigation in the range of 1% of the claim plus all the damages suffered and lawyer fees.

C. Canada:

a) No.

b) Under (iii) yes, as decided by the Supreme Court of Canada in Armada Lines v Chaleur Fertilizers [1997] 2 S.C.R.617.

D. Chile:

a) No.

b) The arrestor may be held liable in tort. The burden of proof is on the defendant to show the arrestor acted in bad faith or negligence (gross or not).

E. Colombia:

a) No specific test for wrongful arrest because the Colombian courts have not dealt with issue. However, art.51 of Decision 487, 2000 provides that liability may arise if the arrest was illegal or unjustified or the guarantee obtained was excessive.

b) The test is recklessness or bad faith of the claimant.

F. Croatia:

a) The debtor has a right to claim form the claimant damages he incurred from an arrest which has been determined as unfounded or unjustified. Unfounded or unjustified arrest is wrongful. Arrest is unjustified if the claimant has not in the prescribed time commenced appropriate action for the merits of the case to be determined, as well in a case in which his claim has been rejected by the court dealing with the merits of the case (art. 354 Enforcement Act 2012).

b) The claimant’s liability for damages is strict liability.

G. Ecuador:

a) No.

b) Proof of illicit or unjustified arrest is required (art.51 Decision 487 CAN).

H. Finland:

There is strict liability imposed on the arrestor for the loss or damage if the arrest is proved to be unnecessary. The arrestor would thus be liable in damages by reason of the mere rejection of the claim.

I. France:
Liability for Wrongful Arrest

Recent case law requires proof of damages due to wrongful arrest by reason of abuse of rights, such as vexatious arrest, excessive security, arrest of wrong vessel, misuse of proceedings.

J. **Greece:**

According to Article 703 of the GCCP, if the claim for which the vessel was arrested is rejected by the Court (hearing the case on its merits) by a final and unappealable judgement, arrestor’s liability (in respect of any loss or damage caused as a result of the arrest or by granting security) will arise only if he was aware or, due to gross negligence, he ignored that the claim in respect of which the arrest was demanded did not exist.

There are very few precedents dealing with damages for wrongful arrest. The reason for this is that in order to arrest a vessel, a summary judgment is required and, therefore, the judge considers arguments and evidence from both sides. If the judge is persuaded that, on a prima facie basis, there is a good claim and a need for arrest or security, it is very difficult for the defendant to argue subsequently that the claimant knew he did not have a good case (unless the claimant used false evidence).

K. **Hong Kong:**

a) No.

b) Proof of bad faith, gross negligence or malice is required.

L. **Ireland:**

a) No.

b) Proof of iii is required.

M. **Israel:**

a) No.

b) As Israeli Law derives from British Law, it does not contain provisions for damages in the event of wrongful arrest, unless bad faith or malice can be shown.

N. **Italy:**

a) The mere rejection of the claim does not entail liability in damages.

b) According to Italian case law (Corte di Cassazione), the arrestor is liable for damages due to wrongful arrest and it must be shown he acted without “ordinary prudence”.

O. **Japan:**

There are no statutory provisions dealing with liability for wrongful arrest. The issue is governed by the provisions of tort law under the Civil Code.

The arrestor will be held liable for wrongful arrest, if it is proved that his behaviour constitutes tort; mere rejection of the claim is not sufficient. However, rejection may give rise to a presumption of negligence and it is upon the arresting party to rebut the presumption and prove that he acted in good faith and on reasonable grounds.

P. **Malta:**
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a) Under Maltese law, the arrestor is not liable to pay damages by reason of mere rejection of the claim on its merits.

b) Maltese law provides that if the arrest was requested by the arrestor frivolously or vexatiously (situation that may be tantamount to the ones described in III.2(b) (i) (ii) (iii), damages and penalties will arise. In such cases, the defendant will have to file a separate claim for damages and will need to provide evidence that the request for arrest was indeed frivolous and / or vexatious.

Q. Mexico:
The arrestor will be liable in damages for the mere rejection of the claim; however the amount of damages must be proven at Court. It also must be proven that those damages are a direct and immediate consequence of the arrest.

R. Netherlands:
The Dutch Court of Cassation ruled in two separate cases that:

- Apart from special circumstances, if it appears that the attachment was effected wrongfully, the loss caused by the attachment must be compensated by the person who effected it, notwithstanding that the latter was convinced on reasonable grounds of the existence of his right of action and did not act light-heartedly (in Dutch, ECCL NL: HR: 1965:AC4076; NJ 1965, 331). [i.e. strict liability]

- The question whether the person effecting an attachment is liable for the consequences of an attachment must be answered on the basis of the criteria that apply for abuse of rights. Depending on the circumstances of the case the question may arise whether the attachment was vexatious and therefore unlawful (in Dutch, ECCL NL: HR: 2003:AI7059; NJ 2004, 150). [This suggests that proof of negligence would be required]

S. Nigeria:
a) No.

b) The test for wrongful arrest is set out in s.13 of AJA. It requires proof of “unreasonably and without good cause” arrest.

T. Norway:
a) According to the Norwegian Dispute Act s.32.11 the claimant has strict liability for the defendant’s economic loss if he does not have a maritime claim at all.

b) The arrestor would also be liable in damages if it was negligent to bring such a claim (NDA s.32.11).

U. Panama:
a) No.

b) Wrongful arrest motion is available in cases of i) error, fault, negligence or bad faith of the arresting party or if the asset is not the property of the defendant, ii) when the asset is arrested in violation of an express contractual term and iii) when the arrest is sought with regard to an extinguished maritime lien.
Liability for Wrongful Arrest

V. Poland:
Strict liability. An arrester can be held liable in damages for the arrest of a ship for mere rejection of the claim or any other discontinuance of the litigation, and therefore its liability does not depend on proof of fault.

The debtor must prove his loss was caused due to the wrongful arrest.

W. Romania:
The arrester will be held liable for damages only if he acted in an abusive manner when he requested the arrest of the vessel. An abusive behaviour would notably be constituted by requesting a few times the arrest of the same vessel for the same claim with the intention to cause damages to the owner of the vessel or acting in a vexatious manner.

X. Russia:
The defendant can claim damages for wrongful arrest if the court rejects the claim on its merits. He must prove his interests were infringed by the arrest and also the damages he suffered.

Y. Senegal:
a) Mere rejection of the claim does not trigger arrester’s liability.
b) Arrester would be liable if evidence of i or ii or iii.

Z. Spain:
Strict liability of the arrester applies in the event of wrongful arrest and the rejection of the claim may trigger that liability. The defendant can initiate proceedings for the assessment of damages arising from the arrest.

There is therefore no need for the defendant to prove negligence, gross negligence or bad faith of the claimant.

AA. Turkey:
a) TCC not clear about damages if the Court rejects the claim.
b) If the arrest is unjustified, the arrester will be liable in damages but Turkish law has a gap in what circumstances the arrest would be unjustified.

BB. Ukraine:
a) In case of arrest to secure a maritime claim, the arrester will not be liable for mere rejection of the claim.
b) In all instances, according to art. 1166 of the Civil Code of Ukraine and judiciary practice the arrester will be held liable if the arrest was wrongful, unless he proves no fault. [A reversal of the burden of proof indicates strict liability]

CC. United Kingdom:
a) No.
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b) Under English law the owner of the arrested ship can only recover compensation for wrongful arrest if there is proof of malice (no honest belief in entitlement to arrest) or gross negligence.

DD. United States:

a) No. Under U.S. law, the fact that a claim is ultimately rejected does not, standing alone, render the arresting party liable in damages for the arrest.

The burden of proof is on the party claiming wrongful arrest/attachment to show specific facts of required conduct and to demonstrate that the arresting party acted in bad faith, malice, or gross negligence. Given this high standard, arrests and attachments are not often found to have been wrongful.

3. Under your national law, if a vessel is arrested pursuant to a decision by a court of first instance, but the arrest is subsequently repealed by an appeal court (without deciding on the merits of the claim):

(a) Would the arrester be liable in damages for the consequences of the arrest, and, if Yes, in what circumstances?
(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrester be required?

A. Australia and New Zealand:

- Australia: The claimant must have acted “unreasonably” or without a good cause.

- New Zealand: Proof of bad faith or gross negligence is required.

B. Brazil:

If the arrest is repealed in second instance, without analysis of its merits, the arrester will be liable for the payment of loss of suit expenses, and may be subject to a penalty for bad faith litigation, if applicable. Any claim for damages arising from the arrest will need to be pursued in a new lawsuit provided there is evidence to support a liability in the tort of negligence as aforementioned.

C. Canada:

a) Yes, but only in the circumstances set out in II.2. (b)(iii) (i.e. proof of gross negligence).

b) For liability in the event of wrongful arrest, gross negligence or malicious intent to cause harm is required.

D. Chile:

a) No.

b) Should the arrested party seek indemnity for the damages suffered, he has to initiate an action in tort by separate proceedings. In this case, he has the burden to prove negligence or bad faith on behalf of the arrester.

E. Colombia:
The arrestor could be condemned to pay court costs and expenses but the same tests mentioned above applies, i.e. bad faith or recklessness.

F. **Croatia:**

See II.2 (a) (b) (art. 354 Enforcement Act 2012) above.

G. **Ecuador:**

Under the Civil Procedural Code if the arrestor losses the arrest claim he will be ordered to pay costs and damages but this Code will be derogated by the General Procedural Code (22nd May 2016). Nevertheless, the arrestor will be responsible if the arrest was illicit or unjustified (art. 51 Decision 487 CAN).

H. **Finland:**

If an appeal court repeals an arrest decision by a court of first instance, the arrestor will be liable in damages for the consequences of the arrest as mentioned in II.2 (i.e. strict liability applies).

I. **France:**

The arrestor will be held liable for damages due to abuse of rights which would be a presumption of negligence or bad faith.

J. **Greece**

Under Greek Law, the claim would be dismissed on the merits in the circumstances described under II.2. In case a claim is dismissed on formalities, it may be resubmitted to the competent Court.

K. **Hong Kong:**

a) No.

b) N/A.

L. **Ireland:**

a) Only in circumstances as under b below.

b) Liability only arises if the claimant acted in bad faith, gross negligence or maliciously.

M. **Israel:**

a) Not usually.

b) Yes but very seldom.

N. **Italy:**

a) An arrestor will not be held liable in damages merely because the arrest was subsequently repealed by an Appeal Court. He will be liable in damages on the grounds of art. 96 C. C. P.

b) According to art. 96 C.C.P. the liability arises if the claimant has acted merely without “ordinary prudence”. The Italian Courts interpret that behaviour as equal to negligence.
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O. Japan:
Rejection of the claim in the judgement on the merits, per se, does not hold the claimant liable for the arrest action.

P. Malta:
An arrestor is not automatically subject to damages simply because a court overturns the arrest. In addition to the circumstances contemplated under II.2 (if the arrestor acted maliciously, frivolously or vexatiously), damages and penalties would unless arise in certain circumstances.

Q. Mexico:
The Superior Court decision will be the one that prevails in order to determine if the arrestor is liable or not for damages.

R. Netherlands:
See answer II.2.

S. Nigeria:
See II.2 above.

T. Norway:
See under II.2 above.

U. Panama:
Yes, possible if any of the grounds of II.2 (b) apply.

V. Poland:
a) The arrestor would not be liable in those circumstances.
b) Such liability does not fall within the provisions of the PCPC.

W. Romania:
An arresting party would not be liable for damages simply because the arrest was repealed by an appeal court. An arresting party will be held liable for damages only if it is found to have acted in an abusive manner, as described in II.2.

X. Russia:
If the arrest is subsequently repealed by the Appeal Court without deciding on the merits of the claim and the case on wrongful or unlawful arrest is not tried on merits either, it would be impossible to establish the liability of the arrestor until the final decision on the merits has been published.

Y. Senegal:
Answer same as II.2 above.

Z. Spain:
 Liability for Wrongful Arrest

a) If the arrest order is repealed by an Appeal Court, the arrestor would be liable for wrongful arrest and shall be obliged to pay damages arising from the consequences of the arrest.

b) Liability of the arrestor is a strict liability, not requiring any evidence supporting negligence, gross negligence or bad faith from the arrestor’s part.

AA. Turkey:

TCC is not clear.

BB. Ukraine:

Under the Ukrainian law, there is no difference between rejections of the arrest either by a court of first instance or by an appeal court.

CC. United Kingdom:

a) No (were the arrest to be set aside on appeal it would be a matter for the first instance court on the application of the respondent (owner) that the original arrest was wrongful)

b) Not applicable.

DD. United States:

An arresting party would not be liable for damages merely because the arrest was subsequently declared invalid by an appellate court. An arresting party may be liable for damages only if the arrest is found to have been “wrongful” as described above in response to II.2.

4. If the arrest claim was not against the owner of the ship and could not be enforced against that ship under the law of the state where the vessel was arrested:

(a) Would, under your national law, the arrestor be liable in damages?

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?

A. Australia and New Zealand:

- Australia: Potentially, if the claimant acted “unreasonably” or without a good cause.

- New Zealand: Potentially if bad faith or gross negligence is proved.

B. Brazil:

As mentioned in III.2, there is no specific provision under Brazilian Law in respect of compensation for wrongful arrest. The arrested party will need to seek compensation in a separate claim or counterclaim, should the fault and the causal connection be proved.

Should it be proved that the arrestor was aware of the non-enforceability of the claim toward the vessel, he could be considered as a bad faith litigator and condemned to the penalties mentioned in II.2 together with the payment of loss of suit expenses.

C. Canada:
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a) No, unless the arrestor is shown to have acted with gross negligence or malicious intent to cause damage.

b) For liability under (a), proof of gross negligence or malicious intent to cause damage will be necessary.

D. Chile:

a) Under the Chilean law, the arrestor would be liable in damages only according to the general tort rules as mentioned above.

b) For liability in tort under (a), proof of negligence or bad faith will be required.

E. Colombia:

The same as per answer II.2 above.

F. Croatia:

a) A ship may be arrested only if it is owned by the personal debtor (being liable for the claim) and who was the owner, operator or charterer of the ship at the time of the arrest (art. 954 Maritime Code 2004), except in cases of mortgages and maritime liens. If these conditions do not exist the arrest will be unfounded. Therefore, the debtor has the right to claim damages against the claimant on the grounds of wrongful arrest.

b) Strict liability.

G. Ecuador:

Yes, if the arrest was illicit or unjustified.

H. Finland:

A vessel may be arrested only for claims against the shipowner. However, if the claim is secured by a maritime lien, a vessel may be arrested even if the debtor is an operator, a charterer or a manager. A mortgaged vessel may also be arrested.

I. France:

The arrestor is not liable according to art. 3-4 of the Arrest Convention 1952 under which the arrest of a vessel against which a claim arose is permitted even if the debtor is not the owner. However, there are a few cases which do not support this point of view (19 March 1996, Alexander III).

J. Greece:

Under Greek law, the arrestor would be liable in damages only by virtue of the conditions set out in II.2. Further, under both regimes of Greek law and the Arrest Convention 1952, there is no requirement for the claim to be enforceable against the sole owner of the vessel to be arrested.

K. Hong Kong:

a) No.

b) Only liable if bad faith or gross negligence is proved.
Liability for Wrongful Arrest

I. **Ireland:**
   a) No, except in cases of bad faith, gross negligence or malice.
   b) Answer as above.

M. **Israel:**
   a) Not usually.
   b) Yes, on the basis of bad faith.

N. **Italy:**
   a) Jurisprudence not clear.
   b) Proof of negligence would at least be required.

O. **Japan:**
   As mentioned above under II.2, if a claim is rejected then a presumption of negligence on behalf of the arresting party is raised and he has the onus of proof that he acted in good faith and on reasonable grounds.

   This presumption will equally apply in a case of arrest of a vessel not owned by the debtor. In Japanese practice, this mistake is held to be crucial and the claimant, in order to avoid being liable in damages, has to prove that he acted in good faith. In reality, the issue of the owner is complex in cases where a corporate veil exists.

P. **Malta:**
   For the Court to order the arresting party to pay damages and penalties, as discussed under III.2, the arrested party will need to demonstrate to the Court that the arresting party was acting either maliciously, frivolously or vexatiously when the arrest was requested.

Q. **Mexico:**
   The arresting party will be liable for damages if the arrest claim could not be enforced. If negligence, bad faith or gross negligence is proven, then the amount of damages to be awarded will be increased accordingly.

R. **Netherlands:**
   The principles contemplated under III.2 would equally be applied in these circumstances.

S. **Nigeria:**
   a) Yes, assuming the arrest was in Nigeria.
   b) If test under II.2 is proved.

T. **Norway:**
   a) In such a case the arrest would normally not be granted under Norwegian Law (NMC s.93 (4)). However, if the arresting party mislead the Court he could be potentially liable under tort law.
   b) Yes, negligence would be required.
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U. Panama:
Proof of negligence will be required.

V. Poland:
According to the PCPC, the arrestor would not be found liable in such circumstances. However, considering that there is no authority or doctrine on the matter, it cannot be totally ruled out that such liability of the arrestor towards the owner of the ship may be established under the PCPC, e.g. in cases in which the arrestor did not commence proceedings against the owner following the arrest, or if commenced, the proceedings were dismissed, rejected, returned.

W. Romania:
Under Romanian law, there is no jurisprudence on any claim for wrongful arrest arising from a case where the claim couldn’t be enforced against a ship.

X. Russia:
Yes.

Y. Senegal:
The arrestor could be liable if the affected party provides evidence of any damage suffered due to negligence, bad faith, or gross negligence of arrestor.

Z. Spain:
Under Spanish Law and the Arrest Convention 1999 system, the right to arrest a vessel not owned by the debtor of the claim is subject to the condition that any future judgment to be delivered on the merits can be enforced against that ship by judicial or forced sale.
If the arrest order is reversed and the arrest lifted, the arrestor shall be obliged to pay damages.
If the arrest is not challenged by the owner of the ship but at the end of the proceedings on the merits the judgement cannot, as a matter of law, be enforced against that ship (or against the security posted for the release of the ship) the arrestor would also be obliged to pay damages.
In both cases the liability is strict, therefore, there is no need to prove negligence, gross negligence or bad faith of the arrestor.

AA. Turkey:
If the arrest is unjustified, arrestor liable to all parties affected – strict liability (neither TCC nor CEE require proof of negligence/bad faith/gross negligence).

BB. Ukraine:
The arrestor can be held liable in damages but the Court will require proof of (a) wrongful act of the arrestor, (b) damages and (c) causal link between the damage and the wrongful act.

CC. United Kingdom:
a) The test of malice or gross negligence would apply (it would be easier however to draw an inference that the arrest in these circumstances was made with malice or gross negligence).

b) See II.2b above.

DD. **United States:**

Under U.S. law, an arrest claim is considered as against the vessel itself (in rem), the arresting party would not be liable in damages for simply arresting a vessel for a claim that is not against the owner of the vessel.

In respect of an attachment of a vessel, the party seeking to attach the vessel must have an in personam, admiralty or maritime, claim against the owner. The attaching party could have liability to the vessel owner for attaching a vessel where the claim was not against the vessel owner, if the attaching party acted in bad faith, gross negligence or malice in bringing the attachment, as described in III.2.

5. **If the amount of the arrest claim was grossly exaggerated:**

(a) **Would, under your national law, the arrestor be liable in damages to the owner of the ship for any of the following losses caused by reason of the grossly exaggerated claim:**

   (i) For the extra cost of the security required,

   (ii) For losses incurred by the owner of the ship by reason of the delay caused by the greater time to procure the security, or

   (iii) For losses incurred as a result of the owner being unable to provide the excessive security?

(b) **For liability under (a), if any, would proof of negligence, bad faith or gross negligence on part of the arrestor be required?**

   A. **Australia and New Zealand:**

   - Australia: The claimant would be liable for the “direct losses” arising from the grossly exaggerated claim, if he acted “unreasonably” or without a good cause.

   - New Zealand: There is no relevant case law but the claimant can be held liable if there is proof of bad faith or gross negligence.

   B. **Brazil:**

   If the arrested party can prove that it incurred the losses listed in 5(a) (i) (ii) (iii) in view of the arrestor’s fault or gross negligence in establishing the amount of the arrest claim, it could claim such damages from the arrestor. In case of bad faith litigation, the arrestor could be subject to the penalties previously mentioned under question III.2.

   C. **Canada:**

   a) Only if it is proved that the arrestor was grossly negligent or acted with a malicious intent to cause damage and the losses under 5(a) (i) (ii) (iii) were incurred.

   b) Proof of gross negligence or malicious intent to cause damage is required.
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D. Chile:

a) The arrestor is exposed to damages listed in 5 (a) (i) (ii) (iii) by reason of grossly exaggerated claim.

b) Such liability will be determined on the bases of Chilean law provisions for tort. Thus, the arrested party has to initiate a civil action and bears the burden to prove the damages. Proof of negligence or bad faith is required.

E. Colombia:

The same test as per answer II. 2 above.

F. Croatia:

There are no specific rules or court decisions dealing with this matter.

G. Ecuador:

Yes, if the arrest was illicit or unjustified.

H. Finland:

In Finland, the bailiff decides the amount and the type of the security (usually a cash deposit or a bank guarantee, but also a P&I Letter of Undertaking) is required in order to obtain the release of the vessel. In addition to the strict liability for unnecessary arrest mentioned in II.2, the arrestor may also be liable under tort law. Further requirements for liability are the loss or damage suffered by the victim and the causative link between the fault and the damage. Consequently, these rules may be applicable if the amount of the arrest claim is grossly exaggerated.

I. France:

If a party is grossly exaggerating the amount of the claim, he is likely to be held liable for damages on the grounds of abuse of rights, as mentioned above.

J. Greece:

As mentioned in III.2, for the arrestor to be held liable to pay damages, the Claimant should have known, or by gross negligence ignored, that his claim did not exist. This may apply for exaggerated claims. Greek tort law may alternatively be applied, which requires at least negligence on the part of the arrestor.

In case of liability of the arrestor in damages, such damages may cover any loss or damage causally connected with the wrongful arrest (i.e. reasonably foreseeable by the arrestor).

K. Hong Kong:

a) The issue does not arise. Security amount is based on a best arguable case.

b) N/A.

L. Ireland:

a) i) No, because the amount of security if disputed is fixed by the court at the time of the application for the release of the ship.
Liability for Wrongful Arrest

ii) No, see (i) above.

iii) No.

b) No.

M. Israel:

a) Theoretically yes.

b) [The answer is “yes” but considering their answer to II.2 (b) above, were the arrestor to be liable for a grossly exaggerated claim, the test should be bad faith or gross negligence]

N. Italy:

a) According to case law and 2 (b) art. 96 C. C. P. the arrestor will be held liable in damages for the losses incurred by a grossly exaggerated claim.

b) The arrestor would be held to be liable in damages if he acted without ordinary prudence. There is, therefore, no need to show bad faith or gross negligence.

O. Japan:

The arrestor will be liable for the losses mentioned in 5(a) (i) (ii) (iii) according to the provisions and principles mentioned in answer to question II.2.

P. Malta:

The determination by a court that the claim was grossly inflated is not sufficient to give rise to a claim in damages. The shipowner must demonstrate that the amount was exaggerated by the arrestor maliciously, frivolously or vexatiously.

Q. Mexico:

The arrestor would be liable for any expense incurred in connection with a grossly exaggerated claim, always provided that such extra expense is duly proven at Court and that those damages are a direct and immediate consequence of the grossly exaggerated claim. If negligence, bad faith or gross negligence is proved, the amount of damages to be awarded will be increased accordingly.

R. Netherlands:

The principles set out in II.2 above would equally be applicable in those circumstances.

S. Nigeria:

Yes, if the test as under II.2 is proved.

T. Norway:

a) Yes, potentially if the amount of the claim is exaggerated.

b) Yes, negligence would be required.

U. Panama:
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a) Determination of the amount of the claim is a matter that is dealt with upon judgement. Arrestor’s failure to provide evidence of the facts of the claim, including the amount, would be a presumption of bad faith and damages may be granted.

b) In a wrongful arrest motion proof of error, fault, negligence or bad faith is required.

V. Poland:
The arrestor would not be found liable in those circumstances.

Such liability would not fall within the provisions of the PCPC. It seems that a claim, not entirely justified, would be partially awarded and partially dismissed when judged on the merits.

W. Romania:
Similarly as mentioned in II.2, the arrestor would be liable, if he exercised his rights in an abusive manner. He would be responsible in damages to the owner of the ship for the extra costs of the security, as stated in II. 5 (a) (i) (ii) (iii) of the question.

X. Russia:
Yes, subject to proof of negligence and losses.

Y. Senegal:
a) Yes, if evidence shows damage was caused as a result of a grossly exaggerated amount of the claim for which security was sought.

b) Yes, any of these grounds could be the basis for a claim for damages.

Z. Spain:
Yes, subject to proof of negligence and losses.

AA. Turkey:
a) Neither TCC nor CEE govern the effect of grossly exaggerated arrest claims. Section 259 of CEE deals only with liability of the arrestor in damages suffered by the counter party and third person. The norm direct and indirect losses (i.e. losses incurred by delay, the extra costs to procure security).

b) If unjustified arrest, strict liability. 3

BB. Ukraine:
Ukrainian law only stipulates the general rules of liability in case of wrongful arrest which can be applied in case of grossly exaggerated claim.

CC. United Kingdom:
a) The arrest claim can properly be advanced on the best arguable basis – the right of arrest is not a discretionary remedy under English law, meaning that the arrestor is entitled to the arrest, provided he complies with the court rules, and he is not obliged to provide full and frank disclosure. However, the

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3 The author is guessing here, there is no direct answer but it can be inferred from the context.
respondent can challenge the level of any security provided. Some older authorities (the George Gordon [1884], the Irish Fir [1943]) support the principle that the arrestor who demanded excessive bail should be ordered to pay the costs of the excessive bail. More recently (the Kos [2010]) a similar result was suggested with respect to the cost of maintaining the security, in the event the underlying claim failed.

b) See II2b above.

DD. United States:

Some courts have recognized a claim for losses under 5(a) (i) (ii) (iii) by reason of tortiously demanding an excessive bond to secure the release of a vessel.

6. If the person allegedly liable for the arrest claim is largely solvent and it is possible to enforce judgements or arbitration awards against him, e.g. he owns many ships (not under separate corporate veils), which call regularly at ports where enforcement can take place:

a) Can the arrest be considered wrongful as a result, so as to attribute liability to the arrestor under your national law?

b) For liability under (a) if any, would proof of negligence, bad faith or gross negligence on part be arrestor be required?

A. Australia and New Zealand:

- Australia: No.
- New Zealand: No.

B. Brazil:

a) The arrestor can be considered liable for wrongful arrest (in cases of non-maritime lien claims), if it is evidenced that the defendant was a solvent debtor and had other assets (fixed or moveable — e.g. ships) to make a future enforcement viable.

b) It will be necessary to prove that the arrestor was aware that the defendant had other assets to respond to the claim, without the need of obtaining security/arresting a vessel before the enforcement.

C. Canada:

a) No, since the election to arrest a ship is not restricted by how easy or how difficult it may be to obtain enforcement. However, there may be liability if it is shown that the arrestor used the legal process for an abusive purpose to maliciously cause damage to the defendant owner.

b) In the event of liability under (a), proof of gross negligence or malicious intent to cause damage is required.

D. Chile:

Under the Chilean law there is no such prerequisite. The arrest is available to the privileged creditor regardless of the solvency of the arrested party.

E. Colombia:

No provisions exist with regard to solvency of the defendant.
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F. Croatia:
No general answer to this question. It is a matter of facts in each case.

G. Ecuador:
No.

H. Finland:
It is in the discretion of the first instance court to allow the arrest of vessels. The arrestor must show both probable cause (the level is set low by the Finnish Supreme Court) for his maritime claim (listed in the FMC), and that there is a risk that the defendant will take away the vessel or otherwise jeopardise the right of the arrestor (the movability of vessels usually constitutes such a risk). Consequently, if the court accepts an application for the arrest of a vessel, there is no liability for the arrestor.

I. France:
According to the French understanding of the Arrest Convention 1952, recovery through arrest is available regardless of the solvency of the other party. The arrestor in such a case will not be held liable for damages unless an abuse of rights can be established.

J. Greece:
The matter of solvency or insolvency of the owner of the vessel to be arrested is not a condition for the arrest (or at least this is not expressly provided in the Arrest Convention 1952, which seems to assume a risk exist by the mere fact that the vessel is moving around the world). Therefore, the arrest of a vessel in such circumstances would not in itself render the arrest wrongful.

However, if the arrest is under the GCCP where the Arrest Convention 1952 does not apply, the defendant owner has the chance to appear before the court, at the hearing for the arrest, and present defences relating to his solvency. Any liability for wrongful arrest would in principle be decided according to art. 703 of the GCCP (see question II.2b above).

K. Hong Kong:

a) No.

b) N/A.

L. Ireland:

a) No.

b) Not applicable.

M. Israel:

a) Yes.

b) Yes.

N. Italy:
Liability for Wrongful Arrest

a) There are no precedents.

b) Art. 96, para. 2 C. C. P. provides specific liability of the arrester who acted without ordinary prudence.

O. Japan:
(a) Japanese Law provides that neither in the application of Provisional Attachments nor in cases of Security Rights or Compulsory Executions will the debtor’s solvency operate, per se, as a bar to a claimant seeking arrest of a ship.

(b) Not applicable

P. Malta:
a) Maltese Law provides that if a creditor inter alia arrests a vessel, if there is no reasonable doubt as to the solvency of the debtor and he is considered to be capable of meeting his dues, the arrester will be found liable to pay a penalty.

b) Proof of negligence or bad faith is not required. What is required is proof of the debtor’s healthy financial state, which the arrester ought to have known, if it was a well-known fact.

Q. Mexico:
If any of the causes for arrest mentioned in the 1952 Arrest Convention (incorporated in Mexican Law) exist, it is sufficient for a vessel to be arrested. If a claim is successful, no wrongful arrest can be claimed on the basis of the solvency of the defendant.

R. Netherlands:
The principles stated in II.2 would equally be applicable in those circumstances.

S. Nigeria:
Irrelevant, see the test under II.2.

T. Norway:
No. However, in such cases an arrest would not be granted because the arrester will fail to substantiate the grounds for arrest according to Norwegian Dispute Act s.33.2 (1).

U. Panama:
No.

V. Poland:
The arrester would not be liable.

W. Romania:
Same principle as mentioned in III.2, the arrester would be liable if he exercised his rights in an abusive manner.
X. **Russia:**

The arrest would not be considered as wrongful in this situation.

Y. **Senegal:**

a) Regardless of the solvency of the party allegedly liable for the claim, the question is whether the arrest has caused damage to the affected party.

b) Negligence, bad faith and/or gross negligence could support a claim for wrongful arrest.

Z. **Spain:**

There is no limitation of the right to arrest a ship by reason of the solvency of the debtor. However, if the arrestor has previously seized other assets of the debtor to secure the same claim, the further arrest of the ship could be contested by the owners and, if successful, the arrestor would be obliged to pay damages (strict liability).

AA. **Turkey:**

The arrestor would not be liable in such a case.

BB. **Ukraine:**

The arrest will not be considered as wrongful in this case.

CC. **United Kingdom:**

a) See II.5 (a).

b) N/A.

DD. **United States:**

a) In connection with an arrest under Supplemental Rule C, the vessel itself is liable for the maritime lien claim.

In connection with an attachment under Supplemental Rule B, as long as the requirements of Supplemental Rule B are met, an attachment would not be considered as wrongful. There is no liability for pursuing an attachment, if the person allegedly liable for the attachment claim is largely solvent and it is possible to enforce judgments or arbitration awards against him.

b) Not applicable.

7. **Are there other circumstances in which, under your national law, an arrestor can be held liable in damages for the arrest of a ship?**

A. **Australia and New Zealand:**

- Australia: No.

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4 [I think the reply meant to refer to the solvency of the person allegedly liable for the arrest claim (and not to the solvency of the arrestor).]
Liability for Wrongful Arrest

- New Zealand: No.
  
  B. Brazil:
  No.
  
  C. Canada:
  No.
  
  D. Chile:
  No.
  
  E. Colombia:
  No.
  
  F. Croatia:
  No.
  
  G. Ecuador:
  No.
  
  H. Finland:
  No.
  
  I. France:
  No.
  
  J. Greece:
Except for the circumstances described in III.2, or under tortious liability under certain circumstances, there are no other circumstances in which under Greek law, an arrestor can be held liable in damages for the arrest of a ship.
  
  K. Hong Kong:
  No.
  
  L. Ireland:
Yes, under section 47 of the Admiralty Court Act 1867: the arrestor shall be liable to pay all costs and expenses occasioned by the arrest and damages for detention of the property unless he shows that without the arrest he could not obtain security.
  
  M. Israel:
In rear cases an arrestor might have to provide a guarantee for damages.
  
  N. Italy:
PART II - THE WORK OF THE CMI

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No.

O. Japan:

No.

P. Malta:
The instances where the arrestor may be found liable to pay damages or penalty are:

- Where the applicant does not pursue with the claim within 20 days after the issuance of the arrest;

- Where the defendant applies for the rescission of the precautionary act, yet the claimant (arrestor) fails to show why the arrest should maintained, or if 15 days prior to the application for the arrest, there is no proof that the creditor demanded payment from the debtor;

- If the circumstances of the debtor were such as not to give rise to any reasonable doubt as to his solvency and as to his financial ability to meet the claims of the applicant, and such fact about the debtor was notorious; and

- If the applicant’s claim is malicious, frivolous or vexatious.

Q. Mexico:

No.

R. Netherlands:

No.

S. Nigeria:
See the test under II.2.

T. Norway:

No.

U. Panama:

No.

V. Poland:

No.

W. Romania:

No.

X. Russia:

No.

Y. Senegal:
Liability for Wrongful Arrest

No.

Z. Spain:
The arrestor can also be held liable in damages for the arrest of a ship in case that he does not bring proceedings on the merits before the competent Court within the period of time given by the arresting Court.

AA. Turkey:
No.

BB. Ukraine:
No.

CC. United Kingdom:
Yes, in the event of breach of contract, i.e. breach of a valid arbitration agreement or exclusive jurisdiction clause, but only insofar as the arrest proceedings were instituted to pursue the claim on the merits rather than solely for the purpose of obtaining security.

DD. United States:
No.

8. Does your national law provide for a penalty or other sanction to be levied upon the arrestor, separate and distinct from any damages, if he is held liable for the arrest?

A. Australia and New Zealand:
- Australia: No
- New Zealand: No.

B. Brazil:
There are no specific penalties under Brazilian Law for a wrongful arrest, unless there is a bad faith litigation.

C. Canada:
No, apart from an award of legal costs in favor of the defendant at the discretion of the court.

D. Chile:
Apart from the damages the arrestor bears the legal costs [strictly speaking this is not a penalty].

E. Colombia:
No.

F. Croatia:
No.
G. **Ecuador:**

No.

H. **Finland:**

No, unless there is criminal conduct of the arrestor.

I. **France:**

According to the Code of Civil Procedure, a party which brings proceedings in an abusive way could be penalized to pay a civil penalty to the state (up to 3000 euros). This provision is rarely used for the arrest of ships [in essence the answer to this is No].

J. **Greece:**

No, except that criminal penalties cannot be ruled out in case that the arrestor (knowingly) used false evidence.

K. **Hong Kong:**

No.

L. **Ireland:**

No.

M. **Israel:**

No.

N. **Italy:**

The Court, when issuing an order on costs, may also discretionarily request the arrestor to pay the other party a sum equitably determined.

O. **Japan:**

No.

P. **Malta:**

Apart from damages, the defendant may also request the court to impose a penalty (which is no less than €1,164.69 and no more than €6,988.12) on the arrestor to be paid to the defendant.

Moreover, if the defendant successfully proves to the court that the warrant of arrest was requested by the arrestor maliciously (as opposed to just frivolously or vexatiously), the arrestor may be subject to a penalty of no more than €11,646.87.

Q. **Mexico:**

No penalty. Only damages (direct damages, consequential damages, loss of profits, etc.).

R. **Netherlands:**
Liability for Wrongful Arrest

No.

S. Nigeria:

No.

T. Norway:

No.

U. Panama:

Irrelevant answer.

V. Poland:

No.

W. Romania:

No.

X. Russia:

No.

Y. Senegal:

No.

Z. Spain:

If the arrester is held liable for the arrest, he shall have to bear the legal costs. This is the sole penalty or sanction to be levied upon the arrester, distinct from any damages (which shall be assessed in a separate procedure).

AA. Turkey:

No.

BB. Ukraine:

No.

CC. United Kingdom:

No, unless there has been fraud in obtaining the arrest upon production of forged documents.

DD. United States:

No.

9. Would a court in your country, seized with a claim for damages for the arrest of a ship in another country, apply the law of the country of arrest (lex forum arresti) in that regard, or would it apply its own substantive national law (lex fori), or would it apply the
Summary of NMLAs answers to the CMI questionnaire, by Aleka Sheppard

substantive law applicable pursuant to the general international private law rules of its country?

A. Australia and New Zealand:
- Australia: Section 34 of the AAA 1988 appears on its face to be limited to claims for unjustified arrest where the vessel was arrested in Australia only. Despite this, if the section can apply in relation to arrests in another jurisdiction, Australian courts would apply Australian Law, consistently with the rules of International (Private) Law, whereupon it may be established that the law of another country should apply.
- New Zealand: The Court will apply New Zealand law, consistently with the rules of International (Private) Law. For example, in the case of Ocean Towing and Salvage (Vanuatu) Ltd v Custom Fleet (NZ) (2006), the ship was allegedly wrongfully arrested in Australia, but as the most significant issues that arose in the case took place in NZ, NZ law was applied (lex fori).

B. Brazil:
First, the Brazilian Courts must have jurisdiction to determine damages for a wrongful arrest which occurred in another jurisdiction (i.e. the defendant is domiciled in Brazil, or the obligation was to be performed in Brazil, or the claim derived from facts occurred in Brazil). If they have, Brazilian Law shall apply. However, it is possible that the judge would examine the arrest rules of the country where the wrongful arrest occurred, in order to analyse the merits of the claim.

C. Canada:
The Canadian court would determine which law has the closest connection to the tort of wrongful arrest, which is for example the law of the tort in the foreign locality where the wrongful arrest occurred, provided that this does not conflict with Canadian public policy. If there is no evidence that the foreign law differs from Canadian Law, it is presumed to be similar to it.

D. Chile:
It depends on the rules upon which the action for damages will be based.

E. Colombia:
Lex forum arresti would apply but only to the extent where the arrest took place in the countries being parties to the Andean Community (i.e. Colombia, Venezuela, Peru, and Bolivia). If not, it is likely that a Colombian judge will apply lex fori.

F. Croatia:
The arrest in general is governed by the Croatian Procedural Law and the court will apply lex fori in respect of damages for wrongful arrest.

G. Ecuador:
Lex forum arresti.

H. Finland:
Finnish courts would apply the lex loci damni as provided in Article 4.1 of Rome II Regulation.
I. **France:**

According to French case law on the arrest of ships, the concept of liability for wrongful arrest is closely associated with enforcement procedures which are governed by *lex fori.*

J. **Greece:**

In case of arrest of a vessel within a member state of the 1952 Arrest Convention the Greek Court would apply the law of the member state pursuant to art. 6 of the Convention.

If not, Greek Courts would apply the substantive law applicable pursuant to *Rome II Regulation* (on the law applicable to non-contractual obligations).

K. **Hong Kong:**

As a general principle the conduct must be actionable under both HK tort law and the tort law of the place of the arrest. However, it is possible to argue that only the law of the country of arrest (*lex forum arresti*) should be applied.

L. **Ireland:**

Pursuant to article 6 of the arrest Convention 1952 the Irish Court would apply the law of the Contracting State in which the arrest was made. If the arrest was in a non-contracting state, the substantive law applicable would be determined pursuant to International Private Law rules as applied generally in Ireland.

M. **Israel:**

*Lex fori* would apply.

N. **Italy:**

Art. 6 of the Arrest Convention is interpreted by Italian law as a specific provision whose application is not barred by *Rome II regulation* and consequently in respect of damages caused by wrongful arrest, Italian courts apply *lex forum arresti*, i.e. the law of the contracting state in whose jurisdiction the arrest was made or applied for. [If it is not a contracting state the result would be the same under *Rome II Regulation*.]

O. **Japan:**

[The answer to this question is not related to the question but to conflict of laws rule with regard to Maritime Liens.]

P. **Malta:**

Today, *Rome II Regulation* applies, and the applicable law would be the *lex loci damni.* The scope of this regulation is universal and every European Court should apply the provisions of the said regulation wherever a cross border claim is brought before it.

Q. **Mexico:**

Mexican Courts will apply Mexican legislation for the arrest and will enforce any decision of competent foreign courts/arbitration panels as issued by the competent courts/panels.
PART II - THE WORK OF THE CMI

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R. Netherlands:
Netherlands in Europe apply the Rome II Regulation (lex loci damni).

The Caribbean Netherlands are not part of the EU, so Rome II Regulation does not apply. However, in the absence of statute law the lex loci delicti, which is the same as lex forum arresti, will apply.

[There is an extremely interesting analysis in the text of the reply to this question, referring to some European cases, which deserves careful reading.]

S. Nigeria:
There is no jurisdiction to hear such a claim.

T. Norway:
The lex fori always applies for procedural issues. Lex forum arresti will apply for the substantive issue of damages according to Norwegian International Private Law.

U. Panama:
No jurisdiction to hear claims for wrongful arrest occurred in another state.

V. Poland:
[The Polish courts would not have jurisdiction to determine such a claim. Assuming they had and since Poland is an EU member, Rome II Regulation will apply.]

W. Romania:
In accordance with Rome II Regulation (see the general rule in Art. 4), the law applicable to a non-contractual obligation arising out of a tort/delict shall be the loci damni.

Article 6 of the 1952 Arrest Convention expressly mentions that all questions whether in any case the claimant is liable in damages for the arrest of a ship or for the costs of the bail or other security furnished to release or prevent the arrest of a ship, shall be determined by the law of the Contracting State in whose jurisdiction the arrest was made or applied for.

Therefore, a Romanian Court, seized with a claim for damages for the arrest of a ship in another country will apply the law of the Contracting State in whose jurisdiction the arrest was made or applied for.

[Presumably, if the arrest was not in a 1952 Convention contracting state, the lex loci damni would apply pursuant to Rome II Regulation, which, in effect, is not in conflict with the 1952 Convention]

X. Russia:
If Russian Court has to consider a claim for damages for the arrest of a ship in a foreign jurisdiction, the Court will follow Russian International Private Law rules and therefore apply the lex loci delicti.

Y. Senegal:
The Senegalese Court would apply lex fori, i.e. its own substantive law.

Z. Spain:
According to Spanish law, the arresting court is the competent court to hear any claim for damages arising from a ship arrest. Therefore, we understand that Spanish Courts would lack jurisdiction in a claim for damages for the arrest of a ship in another country.

AA. **Turkey:**

It follows the Code of Private International Law (CPIL) and International Civil Procedural Law. CPIL gives priority to International Conventions to which Turkey is a contracting state. Otherwise, the relevant conflict of laws rule will apply to find the substantive law governing in the particular case.

BB. **Ukraine:**

According to art. 49 of the Law of Ukraine ‘‘On International Private Law’’ the applicable law is the Law of the State in which an action or other circumstance that gave rise to the claim for damages has taken place. However, the law of a foreign state cannot apply in Ukraine if the action is not considered wrongful under Ukrainian law.

CC. **United Kingdom:**

As the wrongful arrest claim is a claim based on tort, (and assuming the English courts would have jurisdiction to determine a claim in respect of a foreign arrest, which is said to be wrongful) the proper law of the tort rules would apply as established by International Private Law, Rome II Regulation applying lex forum damni.

DD. **United States:**

For a U.S. court to address a claim for wrongful arrest of a vessel in another jurisdiction, the U.S. court will first have to obtain jurisdiction over the defendant in personam or his property to establish quasi in rem jurisdiction. Assuming such jurisdiction exists, a U.S. court can address a claim that a vessel was wrongfully arrested in a foreign jurisdiction. In such cases,

- Some courts have applied U.S. law to the question of whether the arrest was wrongful, without engaging in conflict of laws analysis;

- Other courts have indicated that when the arrest occurs in a foreign jurisdiction and involves foreign parties, “it appears fairly certain that United States law” will not apply to the claim and that a conflict of laws analysis is necessary.
MARINE INSURANCE

Memorandum re suggested criteria (Guidelines) for national governments relating to mandatory insurance requirements under certain international treaties, by the CMI IWG
SUGGESTED CRITERIA (GUIDELINES) FOR NATIONAL GOVERNMENTS RELATING TO MANDATORY INSURANCE REQUIREMENTS UNDER CERTAIN INTERNATIONAL TREATIES

CMI INTERNATIONAL WORKING GROUP ON MARINE INSURANCE

This memorandum addresses ideas for how national governments may satisfy themselves that insurance coverage of vessels in their jurisdictions satisfies minimum requirements under certain international maritime conventions, which require insurance coverage for the subject liabilities. First, this memorandum lays out the minimum insurance requirements under the relevant conventions. Second, it lists certain forms of assurance that the International Maritime Organization ("IMO") has recommended for these purposes. Third, the memorandum lists several additional, more specific, forms of assurance that governments could seek in order to satisfy themselves that vessels in their jurisdictions have the minimum levels of insurance coverage required under the conventions. Finally, this memorandum concludes with our recommendation that national governments make available to one another the information they have obtained with respect to the various forms of assurance described below.

It should be noted that the existence of required insurance does not guarantee the collectability of the amount insured under such insurance (e.g. in the event of insolvency of the underwriter, or local laws prohibiting coverage for certain types of claims damages such as punitive damages); but the suggested Guidelines below address this latter issue (collectability) to the extent possible.

Background

The relevant conventions, as explained in the Annex to the IMO Circular Letter No. 3464, dated July 2, 2014, are:

- The 1992 International Convention on Civil Liability for Oil Pollution Damage ("Civil Liability Convention");
- The 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage ("Bunkers Convention");
- The 2007 Nairobi International Convention on the Removal of Wrecks ("Nairobi WRC"); and

Each of these conventions is relevant because each requires that shipowners carry insurance or other financial security to cover certain minimum limits of liability under the conventions.

Also relevant is the 1976 Convention on Limitation of Liability for Maritime Claims, as amended, (“LLMC”), and Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims (“Directive 2009/20/EC”). The LLMC provides, as of June 8, 2015, that the limits of shipowners’ liability are as follows:

For death and personal injury claims:
- 3.02 million SDR\(^1\) on vessels not exceeding 2,000 gross tons; plus
- 1,208 SDR per ton from 2,001 to 30,000 gross tons;
- 906 SDR per ton from 30,001 to 70,000 gross tons; and
- 604 SDR per ton over 70,000 gross tons.

For property claims:
- 1.51 million SDR on vessels not exceeding 2,000 gross tons; plus
- 604 SDR per ton from 2,001 to 30,000 gross tons;
- 453 SDR per ton from 30,001 to 70,000 gross tons; and
- 302 SDR per ton over 70,000 gross tons.\(^2\)

Directive 2009/20/EC requires shipowners flying the flag of a European Union member state or entering a port under a member state’s jurisdiction to carry insurance covering maritime claims subject to limitation under the LLMC in an amount equal to the relevant maximum amount for the limitation of liability as laid down in the LLMC.\(^3\) (2009/20/EC is available here: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:tr0019 (summary) and http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32009L0020 (full text).)

Finally, the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 (“Protocol of 2002 to

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\(^1\) The “special drawing right” is an international reserve asset whose value is based on a basket of four international currencies. *Special Drawing Rights (SDRs)*, International Monetary Fund (Apr. 9, 2015), http://www.imf.org/external/np/exr/facts/sdr.htm.


\(^3\) This Directive requires implementation through member states’ legislation. Accordingly, each country will need to refer to its domestic law implementing the Directive.
the Athens Convention”) requires that, when passengers are carried on board a ship registered in a state party to the Athens Convention that is licensed to carry more than twelve passengers, and the Athens Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security to cover liability under the Athens Convention in respect of the death of and personal injury to passengers of not less than 250,000 units of account per passenger on each distinct occasion. (The relevant section of the 2002 Protocol is Article 4bis. It can be found on page 13 here: http://library.arcticportal.org/1700/1/Athens_convention_compilation.pdf.) See also the Athens Regulation, Regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents (available on the internet under http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R0392&from=EN).

I. Required Insurance Coverage under Relevant Conventions

The Civil Liability Convention requires owners of vessels carrying more than 2,000 tons of oil in bulk as cargo to maintain insurance to cover, in the case of a vessel equal of 5,000 gross tons or less, 4.51 million SDR and, in the case of a vessel in excess of 5,000 gross tons, 4.51 million SDR plus 631 SDR per ton over 5,000 gross tons, up to a limit of 89,770,000 SDR. Civil Liability Convention, arts. V, VII.

The Bunkers Convention requires owners of vessels of over 1,000 gross tons to maintain insurance “in an amount equal to the limits of liability under the applicable national or international limitation regime,” but not to exceed the limit set under the LLMC. Bunkers Convention, art. VII.

The WRC requires the same of owners of vessels over 300 gross tons. WRC, art. XII.

The HNS Convention requires owners of vessels to carry insurance with one of two different limits of liability, depending on whether the incident-causing hazardous cargo is bulk or other than bulk (which includes situations (i) where the incident was caused by a combination of bulk and packaged and (ii) where it cannot be determined whether the incident was caused by bulk or packaged cargo).

For bulk cargo, the limits are:
- 10 million SDR for vessels not exceeding 2,000 gross tons, plus
- 1,500 SDR per ton from 2,001 to 50,000 gross tons; and
- 360 SDR per ton above 50,000 gross tons.
For other than bulk cargo, the limits are:
- 11.5 million SDR for vessels not exceeding 2,000 gross tons, plus
- 1,725 SDR per ton from 2,001 to 50,000 gross tons; and
- 414 SDR per ton above 50,000 gross tons.
II. Suggested Documentation to Require

In IMO Circular Letter No. 3464, the Organization explains that national governments should require the following forms of assurance as to the underwriter(s) before accepting a shipowner’s evidence of required insurance. (Such evidence of insurance includes Blue Cards issued by members of the International Group of P&I Clubs, as well as similar documentation issued by other insurers, which is subject to verification through the forms of assurance described below.)

i. Adequate documentation of the underwriter’s financial standing, and hence solvency, which could be in the form of audited financial statements from the past three years duly authenticated and signed by the auditor;

ii. Approval by the relevant authority that the underwriter is eligible to carry out insurance business in the country of authority;

iii. Adequate documentation of reinsurance coverage on claims made by the underwriter for liability incurred under the relevant convention;

iv. A guarantee by the underwriter and its parent company, if one exists, that it will cover liability incurred under the relevant convention;

v. A statement to the effect that liability incurred under the relevant convention due to an act of terrorism is covered; and

vi. The rating that the underwriter and/or its reinsurers hold by an independent and internationally recognized rating agency.

III. Suggested Guidelines for Additional Documentation

The documentation listed above should, in general, permit national governments to confirm the existence of required insurance coverage under the relevant conventions. The following is a list of additional, more specific information or documentation that national governments may want to consider before accepting as satisfactory evidence of the existence of a shipowner’s required insurance under the relevant conventions.

Underwriter-specific and policy-specific information

– Other terms of applicable insurance policies; whether there is coverage for pollution cleanup and remediation, third party property damage, personal injury or death, loss of revenue of third parties, and civil and criminal penalties or punitive damages.

– Why important: national governments will want to know not only that a vessel is carrying the requisite amount of coverage but also that the policy covers the relevant costs.
Information about compliance with insurance regulations & licensure

– A copy of the underwriter’s certificate or license to do business in the underwriter’s licensing state.
– Why important: this may establish that the underwriter is held accountable for solvency and responsible underwriting in a jurisdiction with competent regulators.

Information relating to termination of cover by an underwriter

– While there is no particular documentation to seek in respect of potential termination of the relevant insurance coverages, national states should be encouraged to put into place procedures relating to how they will react in the event an underwriter notifies the state’s authority of the termination of the insurance coverage. Such procedures could include a request to the shipowner to return the Certificate, and relaying the information to the other Member States of the termination of the insurance cover.

Conclusion

The foregoing guidelines are intended to assist governments in satisfying themselves of the existence and collectability of mandatory insurance under international maritime treaties. This is not an exclusionary or exhaustive list, and individual countries may employ certain of the foregoing guidelines without employing others; or they may find other means of verifying the existence and collectability of required insurance. It should also be noted that issues of licensing, coverage and solvency of insurers are generally dealt with by insurance regulatory authorities rather than maritime authorities; thus maritime authorities may be required to interface with insurance authorities under certain circumstances.

Finally, in order to encourage the sharing of information and uniformity in assessment of the availability and collectability of required insurance, we encourage national governments to make available to one another the information they have obtained with respect to the various forms of assurance described above and otherwise (perhaps via the IMO or another accessible website), including when a national government has withdrawn recognition of an underwriters’ provision of required coverage.
Polarworthiness – a new standard of seaworthiness in the Polar context?
(A brief abstract of a presentation at CMI 2016 New York),
by Peter J. Cullen

The Load Lines Convention and Arctic Navigation,
(A brief abstract of a presentation at CMI 2016 New York)
by Aldo Chircop

The Polar Code,
(A brief abstract of a presentation at CMI 2016 New York)
by Steven D. Poulin

Polar shipping regulation,
(A brief abstract of a presentation at CMI 2016 New York)
by Alexander Skaridov

Lessons from the Antarctic
(A brief abstract of a presentation at CMI 2016 New York)
by David Baker
REPORT ON THE LEGAL FRAMEWORK FOR CIVIL LIABILITY FOR VESSEL SOURCE OIL SPILLS IN POLAR REGIONS

LARS ROSENBERG OVERBY

1. Executive Summary

The legal infrastructure in the Arctic is very good in the sense that the coastal states have in place legislation that deals with pollution, liability, calculation of losses, responsible parties and funding.

The vastness of the area is a great challenge from a response perspective and it appears that currently there is a lack of adequate response resources and infrastructure to meet a severe spill.

A difference of opinion exists as to whether a major oil spill may reveal the need for considering the current regulation of “pollution damage” in the CLC 1992 Convention in terms of what measures are “reasonable” and as regards impairment of the environment.

There are also dissenting views as regards the possibility that a major oil spill will stress the monetary limits of the CLC and Fund Convention regime although the Supplementary Fund may be sufficient in most instances.

It is an open question how the requirement that environmental reinstatement cost must be reasonable – in the context of the CLC and Fund Convention regime – will be applied by courts in the relevant coastal states and the International Oil Pollution Compensation Fund (“IOPCF”) to such reinstatement attempts in the special Arctic environment. Clarification of the recoverability of reinstatement costs under the CLC and Fund Convention regime would thus assist the coastal States.

Russia would benefit from participating in the Supplementary Fund Protocol to the Fund Convention 1992 should a major oil pollution occur. So would Iceland.

There is a gap with respect to the High Seas in the Arctic but this is not problematic at the moment. In time, the issue should be addressed in the interest of the International community though.

The Antarctica is exposed to legal uncertainty in the event that a pollution incident occurs until the liability Annex to the Protocol on Environmental Protection to the Antarctic Treaty is ratified. Therefore, it is specifically

1 Prepared by certain members of the CMI Polar Shipping Working Group and by the persons mentioned in the report. Organised, compiled and edited by Lars Rosenberg Overby.
recommended that the Antarctic Treaty Protocol States ratify the Liability Annex described in section 7 above.

2. **Background**

The Comité Maritime International (CMI)’s International Working Group (IWG) on Polar Shipping agreed at CMI Hamburg (17 June 2014) that a working paper should be developed regarding how the existing pollution liability regimes\(^2\) and adjacent relevant Conventions actually apply (or do not apply) to the Polar Regions. The scope of the work was to be in respect of oil spills from all vessels (i.e., not simply tankers) such that the working paper would not extend to exploration and production or pipelines, etc.

The figure below provides impressions of the actual or potential

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\(^2\) The National marine pollution legislation and International Conventions.
international shipping routes in the Arctic. At this time, the most active international shipping route is the Northern Sea Route through Russian Federation waters, followed by the Northwest Passage mostly through Canadian waters. The routes are navigated during the summer season. The transpolar route across the North Pole is not feasible at this time, but that may change in the future.

3. Introduction and scope

This report is a study of the issues that can be expected to arise, including with regard to claims for compensation for preventative measures and pollution damage in a polar context, the impact of the likely high costs of response measures in the Polar Regions, the limited capability to respond to oil spills, the limited options for disposal of recovered oil, etc. Also, the question of reasonableness of measures within the CLC 1992 and IOPC Funds framework will be discussed.

The report explores these issues by describing the international regimes for compensation, limitation and liability with reference to the Polar context, and applicable national law with regard to environmental protection, emergency response and liability applicable to Polar Regions. Further, the report explores any potential gaps that may exist with regard to compensation and liability regimes in the event of pollution damage and the resources needed to respond to such an event in these remote regions.

Figure 2 describes the maritime zones under national jurisdiction in the Arctic. The 200 nautical mile limit includes the territorial seas and Exclusive Economic Zones ("EEZ") declared in the region by Canada, Denmark (Greenland), Norway, Russian Federation and the United States. Beyond the limits of the EEZ, these Arctic Ocean coastal States are entitled to make submissions to define the outer limits of their continental margins to the Commission on the Limits of the Continental Shelf by virtue of Article 76 of the United Nations Convention on the Law of the Sea, 1982 (UNCLOS). Norway is the first State to receive recommendations from the Commission that will enable it to define the outer limits. The Russian Federation was the first to make a submission and recently made a revised submission. Denmark has made a partial submission. Neither Denmark nor the Russian Federation have received recommendations to enable definition of outer limits. Canada is expected to make its submission in the near future. It is expected that the USA (a non-party to UNCLOS) will claim entitlement to the continental shelf in the Arctic on the basis of customary international law, but it is unclear whether it will benefit from the procedure established in UNCLOS to enable it to determine the outer limits the continental shelf. The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters as high seas. UNCLOS protects the right of international navigation through the territorial seas, straits used for international navigation, EEZs and high seas of the Arctic.
4. **Structure of the report**

Section 5: Overview of Conventions:
- UNCLOS
- CLC 1992
- Fund Convention overview
- Intervention Convention
- Oil Pollution Preparedness and Co-operation Convention
- Bunker Convention
- HNS Convention
- LLMC 1996

Section 6: National oil pollution regimes and environmental laws
- Greenland (Denmark)
- Canada
- USA
- Norway
- Russia

Section 7: Antarctic waters

Section 8: Non-regulated geographical areas

Section 9: The Polar Code

Section 10: Emergency preparedness and response measures

Section 11: Discussion

Section 12: Conclusions and recommendations
5. Overview of Conventions

5.1 UNCLOS

The UNCLOS has been described as the “constitution” for the world’s oceans. Accordingly, it has a very wide scope, providing a framework for the application of the international maritime conventions and customary law. The Convention applies a so-called zonal approach under which the marine areas within national jurisdiction are divided in different parts: internal waters; archipelagic waters; the territorial sea; the EEZ; and the continental shelf. Rights and obligations depend on the zone at stake. The international community enjoys rights of innocent passage, archipelagic sea lanes passage, transit passage (through straits used for international navigation), and freedom of navigation. The exercise of international navigation rights is accompanied by the duty to protect the marine environment. A coastal state can establish an EEZ up to 200 NM where, in addition to resource rights, it has a general duty to protect the marine environment. Furthermore, UNCLOS provides for the global commons, namely high sea areas and the international seabed area.

Article 234 is particularly relevant to the Arctic region because it provides coastal States with an exceptional power not enjoyed by States in other marine regions. It provides that coastal States bordering ice-covered waters have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the EEZ, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment. The Article 234 power is subject to “due regard” to international navigation considerations and its exercise must be non-discriminatory and on the basis of the best available scientific evidence.

Article 234 contains ambiguities, such as whether its application “within the limits” of the EEZ includes the territorial sea and, if so, what relationship there is between this power and the rights of innocent and transit passage.

5.2 CLC 1992

The scope of the CLC 1992 is actual or threatening oil pollution by persistent oil from tankers in the national territory and EEZ of the State.

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3 Contributed by Kiran Khosla, International Chamber of Shipping, Lars Rosenberg Overby, Hafnia Law Firm and Nigel H. Frawley and Professor Aldo Chircop, University of Dalhousie.


6 The International Convention on Civil Liability for Oil Pollution Damage, 1969 and 1992 Protocol
parties. “Persistent oil” refers to hydrocarbon mineral oil such as crude oil, fuel oil, heavy diesel oil and lubricating oil. Damage caused by non-persistent oil, such as gasoline, light diesel oil, kerosene or liquefied natural gas (LNG) and liquefied petroleum gas (LPG) is not covered by the CLC 1992.

In geographical terms, the regime covers pollution damage in the coastal waters including territorial sea and waters up to 200 NM from the coastline of the participating States and preventive measures, wherever taken, to prevent or minimize such damage. It is hence not necessary for the coastal State to establish an EEZ to be covered by the regime, but the zone must be determined “in accordance with international law”.

All areas of the Arctic where shipping takes place will normally be covered by the CLC 1992. Also, the Convention is relevant to adjacent areas beyond the 200 NM zone if oil is spilled there and threatens areas within the 200 NM zone.

The Convention provides for strict liability on the part of the registered owner of the tanker to pay compensation for “pollution damage”. The liability only applies to losses due to damage (or threat of same) outside the tanker caused by contamination by oil from the tanker. “Pollution damage” is defined in article I.6 and means:

(a) loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, 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.

The definition of “pollution damage” also encompasses what is often referred to as “pure environmental damage” (although this is not defined in the Convention). This category of claim is subject however to the stipulation that compensation for impairment of the environment, other than for loss of profit from such impairment, shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken. Accordingly, loss of use and similar losses are not recoverable under the Convention.

Such reasonable reinstatement measures that fall within the scope of the Convention are aimed at accelerating natural recovery of the damaged...
components of the environment, and may include measures taken at some
distance from, but still within the general vicinity of, the damaged natural
resource, so long as it can be demonstrated that they would actually enhance
recovery. This approach is intended to encourage innovative approaches to
reinstatement. Contributions may also be made to the costs of post-spill
studies, including studies to establish the nature and extent of environmental
damage caused by an oil spill and to determine whether or not reinstatement
measures are necessary and feasible.

The IOPCF Manual (2013 Edition) states as regards reinstatement
measures:

“Environmental damage
1.4.12 Compensation is payable for the costs of reasonable reinstatement
measures aimed at accelerating natural recovery of environmental
damage. Contributions may be made to the costs of post-spill studies
provided that they relate to damage which falls within the definition of
pollution damage under the Conventions, including studies to establish
the nature and extent of environmental damage caused by an oil spill and
to determine whether or not reinstatement measures are necessary and
feasible.”

As it will be normally impossible to recreate the ecological position prior
to a spill, the purpose of reinstatement measures has been described as creating
a biological habitat that organisms which were characteristic for the habitat as
it was before the spill can live\(^{12}\). The costs incurred in this regard must be
reasonably proportionate considering the extent of the environmental damage
and the expected positive effect of the measures.

It is notable that the definition of “pollution damage” and in particular the
“loss of profit” arising from the impairment of the environment creates rights
for recovery of economic losses which are otherwise not recoverable under
e.g. English law. The IOPCF practice as confirmed in the IOPCF Manual
(2013 Edition) is that loss of earnings caused by oil pollution suffered by
persons whose property has not been polluted (i.e., pure economic loss) may
be covered. In particular, the manual suggests as permissible claims: loss of
earnings by fishermen whose nets were not contaminated but who may be
prevented from fishing because of the pollution of the area they normally fish;
loss of income by hotel owners located close to a contaminated public beach;
and even costs of marketing campaigns to prevent or reduce economic losses
by counteracting the negative publicity arising from a major pollution incident.

Compensation is also available for preventive measures “wherever
taken”. Notably, expenses incurred for preventive measures are recoverable
even when no spill of oil occurs, provided that there was “a grave and

\(^{12}\) JACOBSSON: Miljöfarlige sjötransporter – Internationella skadestândsregler, p. 142.
imminent threat” of pollution damage. There is no restriction regarding the jurisdictional zone in which the preventive measures have to be taken in order to be covered by the CLC 1992.

The liability is channelled to the registered owner and as such, an operator or bareboat charterer has no liability (except if 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) but may, however, be subject to recourse claims\(^\text{13}\). A claimant is entitled, however, to bring an action in tort against other persons liable outside the framework of the Civil Liability Conventions, but it is not possible to bring an action against other persons in the “tanker’s” sphere such as servants and agents of the registered shipowners, and also pilots, charterers, managers, operators, salvors and persons who take preventive measures, and their agents and servants enjoy protection.

Although the basis of the liability is strict, there are a few defences available to the registered owners: a) damage resulting from war etc. b) damage wholly caused intentionally by third parties and c) damage caused by negligence of a government or other authority responsible for maintenance of lights and navigational aids in the exercise of that function\(^\text{14}\).

The registered owners’ liability may, however, be limited to sums calculated by reference to the tonnage of the vessel: < 5,000 GT max. SDR 4.51 million and > 5,000 GT max SDR 89.77 million\(^\text{15}\). The maximum amount currently is SDR 89.77 million which at current exchange rates, would result in a USD limitation amount of USD 123 million.

In rare circumstances, the limit of limitation may be breached. Still, that requires that the incident resulted from the owners’ act or omission committed with intent to cause pollution damage or recklessly and with knowledge that such damage would probably result\(^\text{16}\). This is only likely to occur in exceptional circumstances.

The registered owner is under a duty to insure his liability under the Convention and the tanker must carry evidence of this insurance by way of so-called “CLC certificates”\(^\text{17}\). Accordingly, the Convention requires shipowners to have in place compulsory insurance or other financial security up to the maximum amount of the particular ship’s liability under the Convention, such insurance to be verified by a certificate of Insurance issued by a State party to the Convention. The Convention also provides for a direct right of action by third party claimants against the provider of financial

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\(^{13}\) Article II, 4. and 5.
\(^{14}\) Article III, 2.
\(^{15}\) Article V, 1. and 9.
\(^{16}\) Article V, 2.
\(^{17}\) Article VII.
security for the owner’s liability under the Convention. This ensures that recovery will be available even if the owner is not financially capable of paying.

The CLC 1992 prohibits in general direct action against the insurer in cases where the damage resulted from the shipowner’s personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

The liability regime described in the above is not exhaustive, and if the loss exceeds the said limitation amount or if the owner is exempt from liability, the International Oil Pollution Compensation Fund(s) will provide additional funding to the claimants (see below).

5.3 Fund Convention

The Fund Convention 1992, which is supplementary to the CLC 1992, establishes a regime for compensating victims when the compensation due under the applicable Civil Liability Convention is inadequate or unavailable. The fund is contributed to by the oil industry with levies calculated on the basis of the imported quantity of qualifying oil. A Protocol to the Fund Convention 1992 was agreed on 27 May 2003 for the creation of a voluntary third tier of liability for oil pollution. This third tier, the Supplementary Fund, came into force in 2005. This was agreed in recognition of the fact that the maximum compensation available under the CLC 1992/Fund Convention regime 1992 might be insufficient to meet compensation needs in certain circumstances in some Contracting States to that Convention. The Supplementary Fund does not affect what damage is compensated or the criteria for compensation, but only raises the maximum compensation available from SDR 200 million to SDR 750 million and thus reduces the risk of incomplete compensation, or delays in compensation due to ‘pro-rating’ of claims. The level of compensation available for oil tanker incidents in the Arctic would therefore be improved if all the Arctic Coastal States contributed to the Supplementary Fund.

The Supplementary Fund is also contributed to by the oil industry in the member State parties and it is available only in those States which are party to it, the rationale being that it provides higher levels of compensation in States which choose to become parties, while enabling States which do not wish to burden their oil importers with the higher levels of contribution involved to remain outside. The Supplementary Fund currently has 31 contracting States.

Whilst the International Oil Pollution Compensation Fund(s) is intended to assist victims when the CLC 1992 regime is inadequate to cover the damage

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19 Russia and USA do not contribute.
(where the damage exceeds the shipowner’s maximum liability), it also offers recourse where the shipowner can invoke any of the defences allowed in the CLC 1992 or where the shipowner (and the insurer of the shipowner's liability) is financially incapable of meeting the obligations. It is therefore closely linked to the CLC 1992 Convention and has the same scope, definitions and geographical coverage as the CLC 1992.

The combined limits of CLC 1992 and the Funds are some SDR 953 million (approx. USD 1.3 billion) per incident.

5.4 Intervention Convention

The Convention affirms the right of a coastal State to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate danger to its coastline or related interests from pollution by oil or the threat thereof, following upon a maritime casualty.

Such action must be necessary to protect the coastline from damage arising from a pollution incident or potential incident, which gives rise to a “grave and imminent” threat of pollution, from a vessel within the EEZ or on the high seas. This action may include removal of cargo or fuel and other substances deemed hazardous from a stricken ship, taking charge of, or sinking the ship. The coastal State is, however, empowered to take only such action as is necessary, and after due consultations with appropriate interests including the flag State of the ship involved, the owners of the ship or cargoes in question.

A coastal State which takes measures beyond those permitted under the Convention is liable to pay compensation for any damage caused by such measures. Provision is made for the settlement of disputes arising in connection with the application of the Convention.

The Convention applies to all seagoing vessels except warships or other vessels owned or operated by a State and used on Government non-commercial service.

The instrument does not contain any provision with respect to geographical scope or applicability. It thus applies in the Arctic Ocean, but probably not – in the absence of coastal States – in the Antarctic Ocean. However, the parties to Annex IV to the Protocol on Environmental Protection to the Antarctic Treaty have agreed on certain basic obligations in this area. See further below in section 7.

Article 1.1 reads:

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21 Norway, Russia and the USA are parties to both the Intervention Convention and the 1973 Protocol. Denmark is only a party to the former while Canada is not a party to either. There is a similar provision in UNCLOS, Part XII.
“Parties to the present Convention may take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by oil following a maritime casualty ... which may reasonably be expected to result in major harmful consequences.”

The 1969 Intervention Convention applied to casualties involving pollution by oil. In view of the increasing quantity of other substances, mainly chemical, carried by ships, some of which would, if released, cause serious hazard to the marine environment, the 1969 Brussels Conference recognized the need to extend the Convention to cover substances other than oil.

The 1973 London Conference on Marine Pollution therefore adopted the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil. This extended the regime of the 1969 Intervention Convention to substances which are either listed in the Annex to the Protocol or which have characteristics substantially similar to those substances.

The 1973 Protocol entered into force in 1983 and has been amended subsequently to update the list of substances attached to it.

### 5.5 Oil Pollution Preparedness

The International Convention on Oil Pollution Preparedness, Response and Co-operation deals with coastal States’ preparedness and response to oil pollution incidents. Its parties “undertake, individually or jointly, to take all appropriate measures ... to prepare for and respond to an oil pollution incident.” It includes both obligations on ships flying the flag of the party (such as emergency plans and reporting procedures), and obligations in their capacity as coastal States (contingency plans, notification, cooperation with other States). A Protocol from 2000 extended the regime to other hazardous and noxious substances.

This instrument does not contain any provision with respect to geographical scope or applicability either. It thus applies in the Arctic, but probably not – in the absence of coastal States – in Antarctica.

There is a specific Arctic instrument implementing the OPRC: The Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic was agreed in 2013 by the members of the Arctic Council. It includes some more detailed obligations for the Arctic States taking into account the remoteness of the areas and the difficulties involved with

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22 The Oil Pollution Preparedness and Co-operation Convention, 1990.
recovering oil in cold circumstances. The Agreement is not yet in force.

5.6 Bunker Convention

Liability and compensation for damage and losses following oil spill damage from bunkers on board ships are covered by the Bunker Oil Pollution Convention 2001 which came into force on 21 November 2008.

The Convention also follows the CLC 1992 model in that it establishes strict liability for the shipowner coupled with compulsory insurance and direct action against insurers. Unlike the CLC 1992/Fund/Supplementary Fund system, the Bunkers Convention is a single tier regime and does not provide for a separate “stand-alone” limitation fund for additional compensation. It also does not contain an express limit of liability to the shipowner but it preserves existing rights to limit liability, which the shipowner might have whether under national or international law. The channelling provisions are also not quite the same as in the CLC 1992/Fund Convention regime, as claims against persons other than the shipowner who are involved in the vessel’s operation are not excluded under the Convention. The geographical scope of the Convention for compensation for damage costs and for the costs of preventive action is the same as in the CLC 1992/Fund Conventions.

The shipowner (and the insurer) is exempted from liability under the Bunker Convention where the pollution damage is wholly caused by the intentional act of a third party.

As noted above, there is no expressly specified limit of liability amount under the Bunker Convention. Instead, the right to limit liability and the amount is subject to the applicable national or international legislation such as the Convention on Limitation of Liability for Maritime Claims, 1976 as amended (see below in section 5.8). The term “shipowner” is defined as the owner, charterer, manager and operator of the ship and all these persons are entitled to limit their liability.

As in the case of the CLC 1992, the Bunker Convention provides for a system of compulsory insurance by the registered shipowner of a vessel of more than 1,000 GT, to be verified by a certificate of insurance from a State party. The Convention also provides that claimants are entitled to bring action directly against the insurer but the direct liability of the insurer is limited to “the amount equal to limits of liability under the applicable national or international limitation regime but in all cases, not exceeding an amount calculated in accordance with the Convention on Limitation of Liability for Maritime claims, 1976, as amended”. Effectively then, the claimant is entitled to bring direct action against the insurer up to this limitation amount and the

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insurer may not invoke any policy defence which could be invoked in defence of a claim for indemnity under the policy.

5.7 HNS Convention

This Convention was adopted in 1996 to provide for compensation to claimants following accidents involving hazardous and noxious substances carried on board ships, including bulk cargoes (solids, liquids, or liquefied gases) and packaged goods. The Convention also covers oil substances which do not fall within the definition of “persistent oil” under the CLC 1992 and 1992 Fund Convention, such as gasoline, light diesel oil, etc.

It is modelled on the CLC 1992 and Fund Conventions in that there is a two-tier system of compensation, the first tier paid by shipowners and the second by a Fund financed by contributions from HNS receivers when the first tier is inadequate in amount to meet the claims. However, unlike the CLC 1992/Fund Convention regime, both tiers of compensation are contained in a single Convention.

As with the CLC 1992/Fund Convention regime, the HNSC provides for strict liability on the part of the registered shipowner, up to an amount limited by reference to the ship’s tonnage, along with compulsory insurance and claimants’ right of direct action against the insurer.

The 1996 HNS Convention has been ratified by 14 States, but has not entered into force due primarily to the difficulties of setting up systems to report the quantities of hazardous and noxious substances (“contributing cargo”) that are received by sea transport in their respective territory, and the difficulties in setting up a reporting system for packaged goods.

The Convention was amended by a Protocol in 2010 to overcome some of the identified obstacles to the entry into force of the HNS Convention. The substantive provisions of the 1996 HNS Convention are unchanged, although the liability scheme under the first tier has been changed (and the shipowner’s limits of liability increased) and the concept of contributing cargo has been amended. Despite these amendments, the Convention remains difficult for States to implement.

5.8 LLMC 1996

The Convention establishes shipowners’ and certain other parties’ rights to limit their liability for so-called Maritime Claims. It provides a fall back

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position for shipowners and others because it is secondary to “specialist” Conventions such as CLC 1992 that take precedence.

Under the 1976 Convention, the limits are specified for two types of claims, namely claims for loss of life or personal injury, and property claims (such as damage to other ships, property or harbour works).

The limits under the 1976 Convention were set at 333,000 SDR for personal claims for ships not exceeding 500 GT plus an additional amount based on tonnage. For other claims, the limit of liability was fixed under the 1976 Convention at 167,000 SDR plus additional amounts based on tonnage on ships exceeding 500 GT.

The Convention provides for a virtually unbreakable system of limiting liability. Shipowners and other protected parties may limit their liability, except if “it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such a loss, or recklessly and with knowledge that such loss would probably result”.

The protocol of 1996 came into force in 2004. Under the Protocol, the amount of compensation payable in the event of an incident is substantially increased and also introduces a “tacit acceptance” procedure for updating these amounts.

New limits came into force on 8 June 2015 under the tacit acceptance procedure. Under the amendments to the 1996 Protocol, the limits are raised as follows:

The limit of liability for claims for loss of life or personal injury on ships not exceeding 2,000 GT is 3.02 million SDR (up from 2 million SDR). For larger ships, the following additional amounts are used in calculating the limitation amount:

- For each ton from 2,001 to 30,000 GT, 1,208 SDR (up from 800 SDR)
- For each ton from 30,001 to 70,000 GT, 906 SDR (up from 600 SDR)
- For each ton in excess of 70,000 GT, 604 SDR (up from 400 SDR).

The limit of liability for property claims for ships not exceeding 2,000 GT is 1.51 million SDR (up from 1 million SDR).

For larger ships, the following additional amounts are used in calculating the limitation amount:

- For each ton from 2,001 to 30,000 GT, 604 SDR (up from 400 SDR)
- For each ton from 30,001 to 70,000 GT, 453 SDR (up from 300 SDR)
- For each ton in excess of 70,000 GT, 302 SDR (up from 200 SDR).
6. National oil pollution regimes and environmental laws

6.1 Denmark (Greenland)\textsuperscript{28}

\textit{Introduction}

Firstly, it is worth observing that Greenland is a self-governing country within the Kingdom of Denmark. Greenland enjoys extensive self-governance but areas such as defence, security and foreign affairs cannot be taken over by the government of Greenland and is governed by the government of Denmark. Greenland is not a member of the EU but an OTC (“Overseas Countries and Territories”).

As such, Greenland is not a sovereign State. Rather, it is a self-governing unit within the Danish realm and the Danish constitution also applies to Greenland. Laws adopted by the Danish parliament also apply to Greenland unless Greenland is specifically exempted. The political system is very similar to the Danish style of parliamentary democracy. The parliament elects the Self Rule Government, the “Naalakkersuisut”, which is headed by the Premier.

In general, Self Rule has resulted in Greenland taking control over all matters of domestic policy, the economy, the education system, culture, social affairs etc. In all these matters, legislative competence rests with the Self Rule authorities.

Foreign affairs were a matter for the Danish State until the Home Rule (before it became the Self Rule in 2009) was given certain powers in 2005. These powers have gradually been expanded with the implementation of the Self-Government so that the Naalakkersuisut will be authorised to negotiate and enter into agreements as well as being involved in foreign policy issues under the jurisdiction of the Danish State authorities.

Greenland is represented in the Danish UN delegation by two members, who are elected by the Inatsisartut (Landstinget). Greenland has two Nordic Council members, and the Inatsisartut participates in the Nordic Council of Ministers. In addition, Greenland also cooperates with the Faroe Islands and Iceland in various regional fora.

\textit{Jurisdiction}

The territorial waters of Greenland extend for three NM from the coastline\textsuperscript{29}. Further, an exclusive economic zone up to 200 NM (where possible) has been established for Greenland\textsuperscript{30}.

\textit{Conventions}

Denmark is a signatory to the International Convention on Civil Liability for Oil Pollution Damage (1969), including the 1992 protocol, as well as the International Convention on the Establishment of an International Fund for

\textsuperscript{28} Contributed by Lars Rosenberg Overby, Hafnia Law Firm.
\textsuperscript{29} See Anordning (Executive order) no. 1004 of 15 October 2004.
\textsuperscript{30} See bekendtgørelse (Order) no. 1020 of 20 October 2004 that sets out the accurate coordinates and defines the boundaries towards Norway and Canada.
Compensation of Oil Pollution Damage 1971 and 1992 and the 2003 protocol to the 1992 Fund Convention as enacted in Denmark also apply in Greenland. Equally, the LLMC 1996 applies in Greenland. The Nairobi Convention came into force for Denmark on 22 January 2015, but has so far not been made applicable in Greenland. The Bunker Convention forms part of the Danish Merchant Shipping Act (the “DMA”) and came into force on 21 November 2008 whereas the HNS Convention has also been implemented in the DMA but has not yet come into force. The Bunker Convention has so far not been made effective for Greenland. Finally, Denmark is party to the Protocol of 1978 to the International Convention for the Prevention of Pollution from Ships 1973, relating to the International Convention for the Prevention of Pollution from Ships, International Convention on Oil Pollution Preparedness Response and Cooperation, 1990 and Protocol of 1997 relating to the International Convention for the Prevention of Pollution from Ships, These Conventions apply to Greenland also.

The majority of these Conventions have been implemented in the DMA. The DMA has been made effective for Greenland and thus applies there.

**Liability and response**

The basis for making a claim for damages following an oil spill depends on where the spill or pollution has occurred and the type of oil or substance involved: Any spill within the abovementioned 3 NM territorial waters is subject to a local regulation regarding the protection of the marine environment. Beyond that zone, the Danish Marine Environment Act (DMEA) applies. Both acts prohibit the discharge of oil and provide strict liability for spills and pollution by any type of oil, including non-persistent oil and thus supplement the DMA.

Greenland’s local government (“Inatsisartut”) is charged with pollution response within its territorial waters whereas the Danish Arctic Command is responsible for this task outside this area. In both cases, the authorities have the power to intervene; including taking preventive measures and arranging clean up. They may further require the owner of the vessel to provide security...
and detain the vessel. Further, the authorities may board the vessel suspecting of polluting and conduct investigations without a court order. In addition, the master of a polluting vessel is obliged to report the spill.

The two sets of environmental legislation provide liability for the costs of reasonable emergency and response measures but not compensation for other losses such as economic losses and on shore clean up. Nevertheless, such losses could be recovered in tort from the responsible party (that is in the ordinary course of events the owner or bare boat charterer of the vessel). The responsible party may rely on the LLMC 1996 as implemented in the DMA and limit its liability if relevant.

To the extent that the situation is covered by the CLC 1992 Convention as enacted, (i.e. so far as persistent oil is concerned) the tort regime overlaps with the DMA but the latter would prevail as Lex Specialis. Further, section 206 (2) of the DMA provides that sections 191 and 192 (basically implementing articles I-III of the CLC 1992 Convention) also apply to pollution damage caused by vessels other than tankers but – by implication – is only relevant to persistent oil. In such cases, the LLMC 1996 would be the relevant limitation of liability regime for e.g. the owners of a passenger vessel having spilled HFO.

If CLC 1992 applies then the restrictions in the Convention as to which claims are recoverable and the monetary limits apply.

Whilst the DMEA implements the EU Environmental liability Directive40 and stipulates strict liability for any environmental damage or a threat thereof to the marine environment41, these rules do not apply in Greenland.

6.2 Canada42

Introduction

Canada is a confederation consisting of ten (10) provinces and three (3) territories whose jurisdictions and powers are limited by the Constitution Act, 198243. Also limited by this Act are the powers of the federal authority (often referred to as Canada, or the Canadian government authority), which has sole jurisdiction over navigation and shipping throughout the country and its navigable waters, both internal and external.

Jurisdiction

Canada’s authority over its external waters is limited to its territorial sea (12 NM from Canada’s jurisdictional coastline) and the adjoining EEZ (which stretches 200 NM beyond the jurisdictional coastline. However, a portion of the international boundary between Canada and Greenland is less than 200

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41 DMEA § 47 (b) (2).
42 Contributed by Peter J. Cullen, Stikeman Elliott LLP.
Report on the legal framework for civil liability for vessel, by Lars Rosenberg Overby

NM from the baselines of Canada’s territorial sea). Also, Canada has extensive claimed internal waters on the basis of historic title and which are defined as waters enclosed by the system of baselines delineated along the outermost points of the Arctic archipelago.

**Conventions**

Canada is a party to a number of international Conventions relating to oil pollution, including the International Convention for the Prevention of Pollution from Ships, 1973, Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, International Convention on Oil Pollution Preparedness Response and Cooperation, 1990 and Protocol of 1997 relating to the International Convention for the Prevention of Pollution from Ships, and the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. Further, Canada is currently a party to 1992 International Oil Pollution Compensation Fund (IOPC Fund), and the 1992 Civil Liability Convention and the 2003 Supplementary Fund Protocol. Such Conventions have been incorporated into federal legislation under Canada’s principal oil pollution liability statute, the Marine Liability Act (MLA) – occasionally with some modifications (some of which are more fully described below) – and apply in Canada’s arctic waters. It must be noted that amendments to the MLA, in respect of the Hazardous and Noxious Substances Convention, have yet to come into force.

**Liability**

An important modification in the MLA is that the liability rules of the Civil Liability Convention apply to all ships that cause oil pollution, with special rules in Division 1 of the MLA in respect of “Convention ships” – tankers carrying persistent oil in bulk as cargo. The liability of non-Convention ships is found in Division 2 of the MLA, where “oil” is defined in broader terms as meaning oil of any kind or in any form (including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes – but not dredged spoil). Also, a “ship” is defined as any vessel or craft designed, used or capable of being used (either solely or partly) for navigation, without regard to its method of propulsion or lack of propulsion (and includes stranded, sunk or wrecked vessels). The difference between Division 1 and 2 vessels is also relevant in terms of access to the IOPC Fund (limited to spills involving Convention vessels under Division 1).

Generally speaking, Canada’s pollution laws apply to spills on navigable waters, be they on fresh water or sea water (whether ice covered or not). Provincial and territorial pollution laws apply to non-navigable waters and

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44 The source for Canada’s maritime zones is the Oceans Act, Part I.
provincial/territorial shorelines. On occasion, such jurisdictions may overlap depending on the nature and effect of the spill. Thus, charges under both the federal and provincial/territorial pollution statutes may be laid in connection with a marine spill. In Canada’s arctic regions this would include the province of Quebec’s (and to a smaller degree the province of Newfoundland & Labrador’s) northern non-navigable waters and shorelines, and the non-navigable waters and shorelines of the three territories – Nunavut, the Northwest Territories and the Yukon Territory – in addition to Canada’s large expanse of arctic waters.

In 1970, Canada enacted the Arctic Waters Pollution Prevention Act46 (AWPP), an Act that has since been made subject to the MLA. The AWPP prohibits the deposit of waste in arctic waters. The term “arctic waters” is defined as the internal waters of Canada and the waters of the territorial sea of Canada and its EEZ, within the area enclosed by the 60th parallel of north latitude, the 141st meridian of west longitude and the outer limit of the EEZ (with, as previously indicated, the exception of the boundary with Greenland), and essentially covers the arctic archipelago. The term “waste” is broadly defined to cover any substance that, if added to water, would degrade or alter the quality of such water to an extent detrimental to their use by man or by any animal, fish or plant that is useful to man. This definition parallels the definition of “pollution” under the MLA.

The AWPP is enforced through Canadian pollution prevention officers who may board and inspect any vessel within defined Safety Control Zones (broadly including all Canadian arctic waters) and take action where necessary. The AWPP also provides federal authority to implement regulations in respect of pilotage and the use of ice navigators in Canada’s arctic waters. In this regard, the use of qualified ice navigators is mandatory on specific vessels (including all tankers) in certain Safety Control Zones.

It is noteworthy that the AWPP was enacted to ensure that “the national resources of the Canadian arctic are developed and exploited and the arctic waters adjacent to the main land and islands of the Canadian arctic are navigated only in a manner that takes cognizance of Canada’s responsibility for the welfare of the Inuit and other inhabitants of the Canadian arctic and the preservation of the peculiar ecological balance that now exists in the water, ice and land areas of the Canadian arctic”47.

Pollution under the MLA (Division 1 or 2) essentially gives rise to strict liability (not dependent on proof of fault or negligence) for oil pollution damage (including any damage as a result of impairment to the environment

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and the costs of reasonable measures of reinstatement) as well as the costs and expenses incurred by the federal Minister of Fisheries and Oceans (an authorized response organisation under the Canada Shipping Act, 2001\(^{48}\)) or others in respect of measures taken to prevent, repair, remedy or minimize oil pollution damage. This includes the Minister’s reasonable costs of monitoring a spill and clean up efforts. As the Canadian Coast Guard (and its fleet of ice breakers, tenders and patrol vessels) and Fisheries Canada (and its fleet of patrol and inspection vessels) report to the Minister, it is these entities who are generally engaged in such matters.

Canada has implemented a Ship-source Oil Pollution Fund (SOPF) headed by a federally appointed Administrator who reports annually (info@sopf.gc.ca). In 2014, the SOPF reported on two oil pollution claims stemming from vessels in Canada’s arctic waters. The first involved a Bahamian-registered passenger vessel in a 2010 grounding in the Coronation Gulf off the Yukon Territory (monitoring costs and expenses under dispute between the shipowner and the Canadian Coast Guard and the Canadian Hydrographic Service). The second involved a Canadian registered product tanker in a 2010 grounding near Gjoa Haven, off the Nunavut Territory (monitoring costs in respect of a Coast Guard ice breaker that stood by). The Administrator continues to monitor the first dispute, and has settled the second on a compromise basis (based on the reasonableness of certain expenses).

The SOPF’s jurisdiction to pay oil spill claims is not limited to matters involving tankers carrying persistent oil – it covers all classes of ships and also deals with “mystery spills” (unattributed spills). Furthermore, it may be a fund of first resort for claimants\(^{49}\) as well as a fund of last resort, and may provide a further layer of compensation in addition to the compensation regimes under the IOPC Fund and the 1992 Civil Liability Convention.

Additional relevant pollution statutes (providing for a mixture of criminal and public welfare offenses) which have occasionally been applied where there are overlapping federal departments, or overlapping jurisdiction with provincial/territorial non navigable waters or shorelines, include the federal Fisheries Act\(^{50}\), Migratory Birds Convention Act, 1994\(^{51}\), and Canadian Environment Protection Act\(^{52}\), 1999, as well as Quebec’s Environment Quality Act\(^{53}\) and the Newfoundland and Labrador’s Environmental Protection Act\(^{54}\).


\(^{49}\) Only for specified claimants under the MLA! Compensation is administered on an administrative basis, and a dissatisfied claimant can appeal the decision of the SOPF Administrator to the Federal Court.

\(^{50}\) R.S.C., 1985, c. F-14.


\(^{52}\) S.C. 1999 c.33.

\(^{53}\) R.S.Q., c. Q-2.

\(^{54}\) SNL 2002 C.E-14.2.
These statutes generally provide that oil pollution constitutes a strict liability offence (without proof of fault or negligence) and like the MLA generally target the owner, custodian or person who had the charge, management or control of the polluting substance (such as the shipowner or bareboat charterer). Some reach further and hold that the directors or officers of a company that commits an offence may be presumed to have participated in the offence unless they can establish that they exercised due diligence and took all necessary precautions to prevent such offence.

Finally, Canada’s Admiralty Court, the Federal Court 55, has in rem jurisdiction in respect of navigation and shipping matters. It is a national admiralty court that sits across the country and is the court referred to in the MLA in respect of limitation proceedings and related claims for pollution matters.

6.3 USA 56

Introduction

The State of Alaska is the only U.S. state that borders the arctic. The northern and western Alaska coastline is bounded by the Beaufort Sea, the Chukchi Sea, and the Bering Sea. Vessels sailing between Europe and Asia must pass through the Bering Strait, a 41 nautical mile wide strait separating Alaska from the Russian Federation. While the United States has enacted federal legislation governing civil liability for discharges of oil from vessels within 200 NM of the United States coastline, the laws of the State of Alaska governing oil pollution apply to any discharges of oil that occur within three NM of the Alaska coast.

Conventions

While the United States have adopted some international Conventions relating to oil pollution discharges from vessels, such as the International Convention for the Prevention of Pollution from Ships (MARPOL) and the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, it has not adopted the International Convention on Civil Liability for Oil Pollution Damage (CLC 1992). The United States have further enacted the Act to Prevent Pollution from Ships 57, which implements the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) in the United States. MARPOL 73/78 was enacted to control pollution from vessels as mandated by the Law of the Sea Convention 58. The United States ratified MARPOL on July 2 1980, and subsequently passed implementing legislation in the form of the Act to Prevent Pollution from Ships, which gives the Coast Guard broad authority to regulate

56 Contributed by Bert Ray, Keesal Young Logan, Anchorage, Alaska.
58 LOS Convention, Article 211(1).
vessel operations and enforce MARPOL requirements. This law allows the Coast Guard to enact necessary regulations or requirements to carry out the provisions of MARPOL. Regulations enacted pursuant to this authority and enforced by the Coast Guard establish criteria regulating the discharge of various categories of operational wastes from ships that are covered by the MARPOL annexes.

**Jurisdiction**

The United States have adopted the following maritime boundaries as measured from the baseline:

1. Alaska Coastal Waters – three geographical miles
2. Territorial Sea – 12 NM
3. Contiguous Zone – 24 NM
4. Exclusive Economic Zone (EEZ) – 200 NM

Throughout the history of the United States, the U.S. has been a proponent of freedom of navigation and recognises the legal right to navigation through its territorial sea by foreign vessels under the doctrine of innocent passage, and the related doctrine of transit passage. Therefore, under U.S. law, ships in innocent passage, which by definition would exclude vessels bound for or departing from U.S. ports or places, are not required to comply with many of the laws and regulations applicable to U.S. flagged vessels or foreign vessels calling at U.S. ports or places. By way of example, United States’ requirements relating to oil spill response plans do not apply to foreign flag vessels engaged in innocent passage or transit passage. However, foreign tank vessels operating in waters subject to the jurisdiction of the United States, including the EEZ, must immediately report any incidents affecting the seaworthiness of the vessel or posing a threat to the environment.

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60 See extensive regulatory requirements in 33 C.F.R. Part 151, subpart (a), Implementation of MARPOL 73/78. Violation of these regulations may result in civil or criminal penalties. 33 C.F.R. §151.03 makes this subpart applicable to each ship that must comply with Annex I (Regulations for the Prevention of Pollution by Oil), Annex II (Regulations for the Control of Pollution by Noxious Liquid Substances in Bulk), or Annex V (Regulations for the Prevention of Pollution by Garbage from Ships) of MARPOL 73/78.
61 The normal baseline under the Convention on the Territorial Sea and the Contiguous Zone, Article 3, and the 1982 Law of the Sea Convention, Article 5, is the low water line along the coast as marked on large – scale charts officially recognized by the coastal State. Both Conventions recognize the method of “straight baselines” or by deeply indented coast lines or fringe islands may be used to measure the baseline. The United States has not used the straight baseline method to determine the territorial sea baseline.
62 Pursuant to the Submerged Lands Act, 43 U.S.C. § 1312, the seaward boundary of coastal States is generally a line three geographical miles from their coast line.
63 Pursuant to the Submerged Lands Act, 43 U.S.C. § 1312, the seaward boundary of coastal States is generally a line three geographical miles from their coast line.
64 Presidential Proclamation 7219, September 2 1999.
66 33 C.F.R. § 155.1015(c)(7).
67 46 C.F.R. § 4.05 – 2(a).
Liability
In the United States, both federal and State laws may determine a vessel owner’s civil liability for oil pollution discharges from vessels. The Federal Water Pollution Control Act (FWPCA)\(^{68}\) prohibits the discharge of oil in a harmful quantity from a vessel into the navigable waters of the United States. A harmful quantity is defined as a quantity that produces a sheen. For purposes of the FWPCA, the navigable waters of the United States extend seaward to the limits of the United States EEZ. The FWPCA imposes civil penalties upon owners and/or operators of vessels that discharge oil in violation of the Act.

The Oil Pollution Act of 1990\(^{69}\) (OPA ‘90) imposes civil liability for unauthorized discharges of oil into the navigable waters of the United States. As with the FWPCA, navigable waters for purposes of OPA ‘90 extend to the outer limits of the U.S. EEZ.

Federal law also requires that vessels transiting through the U.S. EEZ that are bound for or departing from a U.S. port or place must have an approved vessel response plan for responding to an oil pollution incident. The federal vessel response plan requirements do not apply to vessels in innocent passage.

United States federal laws governing liability for oil pollution do not pre-empt the application of the law of coastal States imposing similar liabilities. Alaska is the only coastal State that borders the polar region. Alaska has enacted laws governing discharges of oil in its coastal waters that would be applicable to a discharge from a vessel operating within those coastal waters. Vessels transiting through the narrow Bering Straits between Alaska and Russia might operate within Alaska coastal waters.

Federal Law
The Oil Pollution Act of 1990
The liability provisions of OPA ‘90 apply to any incident involving the discharge or the substantial threat of a discharge of oil into the navigable waters of the United States or the U.S. EEZ\(^{70}\). Each “Responsible Party\(^{71}\)” for an OPA ‘90 incident is liable for “removal costs” and “damages”. Liability is strict, but OPA ‘90 provides limited defences to liability and a limitation on liability.

Defences to OPA ‘90 Liability
OPA ‘90 provides that, under certain conditions, a responsible party may be entitled to a complete defence to liability, or to limit its liability\(^{72}\). Complete

\(^{68}\) 33 U.S.C. § 1321(b).
\(^{69}\) 33 U.S.C. § 2701
\(^{70}\) 33 U.S.C. § 2702.
\(^{71}\) Responsible Party with respect to a vessel is defined as any person owning, operating, or demise chartering the vessel. 33 U.S.C. § 2701(32).
\(^{72}\) 33 U.S.C. § 2703.
Defences under OPA '90 are difficult to maintain, and are only available if the oil discharge was “caused solely” by one or a combination of three events: an act of God; an act of war; or an “act or omission of a third party” with which the responsible party was not in a “contractual relationship.” An “act of God” means an “unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.” No responsible party has successfully asserted an act of God defence to OPA '90 liability since the Act’s enactment. Were a ship to spill oil due to an encounter with abnormally heavy ice in polar waters, it is unlikely that the vessel’s owner or operator would succeed in asserting an act of God defence under OPA '90.

The defence to liability for spills caused by third parties does not apply if the third party was in a contractual relationship with the vessel. Privity of contract is not required to establish a contractual relationship between a third party and the vessel’s owner or operator. For example, pilots, tugs, and others providing services to a vessel who are hired by the vessel’s time charterer are considered, for OPA '90 purposes, to be in a contractual relationship with the vessel’s owner and operator.

Defences under OPA '90 are not intended to allow a responsible party to simply assert a complete defence and avoid the obligation to respond to cleaning up a discharge. A defence is not available to the responsible party where it fails or refuses to report the incident as required by law, to provide reasonable cooperation and assistance in connection with removal activities, or, without sufficient cause, to comply with an order issued by the federal on-scene coordinator. Thus, the responsible party must pay for response costs and settle third party claims until the government agrees that it may stop doing so, or it risks losing its defence to liability. If the owner is ultimately adjudged to be entitled to a defence, it may recover amounts it has expended on response costs and damages from the federal government.

Limits on Liability

OPA '90 provides that a responsible party may limit its OPA '90 liability under certain circumstances. If a responsible party is able to establish its right to limitation of liability, limits are calculated by reference to tonnage and type of the vessel. Also, limits are expressed as being “the greater” of either a fixed amount or an amount calculated on the basis of the vessel’s gross tonnage.

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73 The defense based upon an act or omission of a third party is not available if the third party’s “act or omission occurs in connection with any contractual relationship with the responsible party.” In addition, the responsible party must establish that it took precautions against foreseeable negligence and foreseeable consequences of that third party’s negligence.

74 See Unocal v. United States, 222 F.3d 528, 535 (9th Cir. 2001) and cases and statutes cited.
Because the limit is expressed as “the greater of” the two amounts, there is not really a “maximum sum” that can be stated but as per May 2015 the limits are as appears below.

The OPA limits are periodically adjusted for inflation and in 2014, the Coast Guard published a proposal to increase the liability limits to account for inflation. The following are the current limits on liability effective from 21 December 2015.

Single Hull Tanker > 3,000 GT: The greater of USD 3,500/GT or USD 25,845,000.

Single Hull Tanker < 3,000 GT: The greater of USD 3,500/GT or USD 7,048,800.

Double Hull Tanker > 3,000 GT: The greater of USD 2,200/GT or USD 18,796,800.

Double Hull Tanker < 3,000 GT: The greater of USD 2,200/GT or USD 4,699,200.

Non-Tank Vessel: The greater of USD 1,100/GT or USD 939,800.

Limitation of liability is not available where an incident was proximately caused by (1) gross negligence, (2) wilful misconduct, or (3) violation of applicable federal safety, construction, or operating regulations on the part of the responsible party, an agent or employee of the responsible party, or a person acting pursuant to a contractual relationship with the responsible party75.

As with the defence to OPA '90 liability, the right to limit liability under OPA '90 does not mean that a responsible party can stop paying response costs or settling third party claims as soon as its liability limit is reached. A responsible party will lose its right to limit its OPA '90 liability if it fails to provide reasonable cooperation and assistance requested of it by the federal government or to comply with clean-up orders. If the responsible party pays more than its limitation amount in responding to an OPA '90 incident, it can seek reimbursement of its excess payments from the federal government. The responsible party will also lose its right to limit its liability if it fails to immediately notify the Coast Guard of an OPA incident.

**Damages**

OPA '90 makes the responsible party strictly liable for removal costs and compensatory damages. The responsible party is not only the owner of the vessel but can also be the operator and bareboat charterer. Removal costs include the costs to contain and remove oil from water and shorelines, and other actions necessary to minimize or mitigate damage to public health or welfare76. Liability for removal costs includes costs of cleaning up and responding to the spill, the costs incurred by the United States (typically the

75 33 U.S.C. § 2704.
Coast Guard), and State and local officials for monitoring the clean-up.

Recoverable damages include response, removal, clean-up costs and “other damages” arising from a discharge or threatening discharge of oil, damage to natural resources and the cost of assessing them, damage or loss of real or personal property, loss of revenues by governments, loss of profits or earning capacity, lost subsistence damages, and damages for net costs of public services. Natural resource damages are a unique and controversial type of damages awarded under United States law. State and federal government agencies with jurisdiction to manage natural resources are considered trustees of those resources and manage them on behalf of the public. When natural resources are damaged or impaired as the result of an oil spill, the trustees are statutorily required to assess the damage to the resources, to assess whether they should implement restoration proposals to help damaged resources recover, and to develop remedial projects to compensate the public for the interim loss of use of damaged resources. Natural resource damage assessments are often costly and time consuming. The total costs of natural resource damage claims often are in the tens of millions of dollars in spills originating from vessels.

Claims must be made against the responsible party or its guarantor for the reimbursement and compensation\(^77\). The responsible party is therefore under a duty to procure evidence of financial responsibility (so-called “COFR”)\(^78\).

*Federal Water Pollution Control Act*

A vessel owner or operator is also subject to a civil penalty under the Federal Water Pollution Control Act for discharging oil\(^79\). The penalty can be up to USD 37,500 per day of violation, or up to USD 2,100 per barrel of oil discharged. However, in any case in which the discharge was the result of gross negligence or wilful misconduct, the penalty shall be not less than USD 150,000 or USD 5,300 per barrel of oil discharged. In smaller spills, the government may proceed with an administrative penalty, in which case the maximum penalty is USD 37,500.

The FWPCA also imposes civil penalties if the owner or operator fails to properly carry out removal of a discharge after being ordered to do so by the United States, or fails to immediately report a discharge.

*Liability under Alaska State Law*

In the litigation arising out of the Deepwater Horizon incident, the United States Court of Appeals for the Fifth Circuit held that State oil pollution laws do not apply to a spill that originates outside of the State’s territorial waters and subsequently drifts into these waters. The Fifth Circuit Court of Appeals has jurisdiction over appeals from U.S. States along the Gulf Coast, but its

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\(^77\) § 2705(a).
\(^78\) § 2716(a).
jurisdiction does not extend to Alaska so its decision is not binding on courts in Alaska. It is thus unclear at this time whether Alaska law’s strict liability provisions would apply to an oil spill from a vessel originating outside of Alaska territorial waters that drifts into State waters.

Alaska has jurisdiction over waters within three geographical miles seaward of the baseline, and offshore islands. While most commercial vessels would normally stay well outside of Alaska’s territorial waters, there are areas in the vicinity of the narrow Bering Straits in which vessels might transit through State waters. Were a vessel to discharge oil, or other pollutants while in State waters, the strict liability provisions of Alaska law would apply to such a discharge.

**Strict Liability under State Law**

Alaska imposes unlimited strict liability for damages caused by oil spills on the vessel owner and operator and the owner of oil carried as cargo aboard tank vessels. Potential plaintiffs include the State of Alaska, municipalities, and private individuals. Damages are broadly defined to include personal injury and property damage as well as loss of income, the loss of means of producing income, loss of tax revenues, the loss of an economic benefit, and State response costs.

Defences to strict liability are few. The defendant is not strictly liable if the discharge is caused solely by an act of God, but only if the defendant, within a reasonable time after the discharge, discovered the discharge and promptly commenced operations to clean up the discharge. No strict liability is imposed if the discharge is caused solely by act of war or the negligent or intentional act of a third party other than a party or its agents in privity of contract with or employed by the defendant. However, the latter provision only precludes strict liability if the defendant exercised due care with respect to the hazardous substance and took reasonable precautions against the act or omission of the third party and discovered the discharge and began operations to clean up the discharge within a reasonable time after the discharge.

**Civil Penalties for Discharges of Oil**

Civil penalties may be imposed for failing to report discharges, failing to clean up discharges, or failing to comply with ADEC orders. Alaska has enacted three different civil liability provisions applicable to oil spills. The provisions relate to the size of the spill and the type of oil.

80 A.S. § 46.03.822.
81 A.S. § 46.03.822.
82 A.S. § 46.03.760 governs civil penalties for discharges of oil, whether crude or refined, in amounts of 18,000 gallons or less. A.S. § 46.03.758 governs civil penalties for a discharge of refined oil which exceeds 18,000 gallons. A.S. § 46.03.759 governs civil penalties for discharge of crude oil which exceeds 18,000 gallons.
For discharges under 18,000 gallons, Alaska Stat. § 46.03.760 provides for a civil penalty to be imposed against any person who “violates or causes or permits to be violated” a provision of Alaska pollution laws. The penalty may not exceed $100,000 for the initial violation, nor more than $5,000 for each day after that in which the discharge continues. It is a violation of Alaska pollution laws to discharge oil into State waters. Neither fault nor intent are required to violate this provision. Thus, a vessel owner or operator is liable for a civil penalty whenever oil is discharged from their vessel, regardless of whether they are at fault.

For discharges of crude oil or refined oil exceeding 18,000 gallons, Alaska law imposes a per gallon civil penalty on the vessel owner, bareboat charterer, or master. If the discharged oil was being carried as cargo, the owner of the oil is also liable for a civil penalty. The amount of the penalty is based on the size of the spill, the toxicity and disposability of the oil spilled, the sensitivity of the marine environment in which the spill occurred, whether the spill was caused by gross negligence or wilful misconduct, and the success of recovery efforts.

**OSLTF**

The liability regime works in conjunction with the American Oil Spill Liability Trust Fund (the “OSLTF”)\(^\text{84}\). The ultimate sum in terms of compensation by the fund is USD 1 billion.

### 6.4 Norway\(^\text{85}\)

**Introduction**

The section below outlines the Norwegian rules that apply in the Arctic and Antarctic not based on international Conventions regarding acute pollution from ships and drilling units. Rules on intervention will be mentioned to the extent there is a system for refund of costs associated with them. Only the portions that apply outside the territorial border of mainland Norway are outlined.

Possible conflicts of the provisions or between the provisions and the Conventions are not discussed.

**Jurisdiction**

The territorial waters of Norway extend for 12 NM from the coastline.\(^\text{86}\) The Norwegian claims for continental shelf jurisdiction beyond 200 NM have been recognized by the Commission on the Limits of the Continental Shelf (CLCS)\(^\text{87}\).

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\(^{83}\) A.S. 46.02.758 & .759.

\(^{84}\) 26 U.S.C 9509.

\(^{85}\) Contributed by professor Erik Røsæg, Scandinavian Institute of Maritime Law and senior legal advisor Kjersti Tusvik of the Norwegian Coastal Administration.

\(^{86}\) Act No. 57/2003.

\(^{87}\) CLCS/62, 20 April 2009.
Polar Shipping

Conventions
Norway has ratified:
- CLC 1992
- Fund Convention 1992
- Supplementary Fund Convention
- Bunker Convention
- LLMC 1996

Norway has also accepted the Liability annex to the Antarctic treaty.88

Norway has not ratified:
- HNS Convention (ratification expected shortly)
- Nairobi Convention

Liability
Norwegian torts law may apply in the Arctic if the strongest connections of the incident are to Norway (see the Supreme Court case Rt-1923-II-58).

The Maritime Code (NMC)89

NMC § 207 makes the strict liability provisions of CLC 1992 and the monetary limits applicable if the oil pollution happens on the High Seas or in a state that is not party to CLC 1992 or on the Norwegian continental shelf but outside the EEZ and Norwegian law is applicable as a matter of international private law. In these cases the limitation rules of CLC 1992 apply by virtue of §§ 194 and 207. A special limitation fund can be established in national law for these situations. Certain special provisions apply to the management of the fund (see § 207 (2)).

NMC § 208 makes the strict liability provisions of CLC 1992 applicable to oil pollution not subject to the CLC 1992 for all other reasons than the geographical scope. The global limitation regime (based on LLMC 1996) applies.

There is a special global limitation fund for clean-up costs (the possibility of reservation under LLMC Art. 18(1) has been utilized; see §§ 172a and 175a). There are also special global limits for drilling vessels (§ 181) and oil rigs (§ 507) in national law. The costs of the responsible party in respect of clean-up operations can be claimed in the abovementioned special limitation fund pursuant to NMC § 175a, but not in the ordinary global limitation fund pursuant to NMC § 175 (NMC § 179). Costs for clean-up operations following a bunker fuel spill is subject to limitation in accordance with § 175a (see NMC § 172a) if resulting from a collision or a grounding. Otherwise a bunker spill will be regulated by the Norwegian implementation of the Bunker Convention (§183).

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The limitation limits in the NMC do not apply to the liability of off shore operators under the petroleum Act (see §209).

The Pollution Control Act

The scope of the liability provisions of the Pollution Control Act (“PCA”)\(^{90}\) is similar to that of the corresponding provisions of the Maritime Code (PCA § 54). The Pollution Control Act applies to pollution from sources in the territorial waters, and in the EEZ if the source is a Norwegian ship or installation. The pollution Control Act does not apply for Svalbard (PCA § 3). The Act establishes strict liability for pollution (§ 55). In this connection, this is important because it makes the polluter; usually including the shipowner (“reder”) strictly liable for pollution, including pollution from other substances than oil. The act also includes provisions pertaining to compensable environmental damages (§ 57). There are also provisions pertaining to who can claim on behalf of the general public in certain cases (§ 58). The claim can extend to costs of establishing e.g. alternative recreational facilities\(^{91}\).

In addition to torts liability, there are provisions for intervention to prevent pollution at the high seas\(^{92}\), subject to Norwegian treaty obligations (§ 74; this is a reference to, i.e., UNCLOS). After such intervention, the government can claim refund from a responsible party (§ 76). However, limitation rules and exceptions of maritime law take precedent as lex specialis.

The PCA § 7 provides that the person responsible for pollution shall undertake clean-up. The liability limits do not apply to this duty. The authorities may perform clean-up measures on behalf of the responsible polluter [see §§ 7 and 74. In the event of larger incidents the authorities will often take charge of clean-up operations pursuant to PCA § 46. After such response the authorities can claim recovery of expenses and damages from a responsible party (§ 76). However, limitation and exceptions of maritime law take precedent as lex specialis. Their recourse claim may be subject to, for example, global limitation rules. The result of this is that the less prepared the polluter is, the more likely that the authorities will take over the clean-up operation and the more likely that the polluter will benefit from limitation.

In addition to torts liability, there are provisions for intervention to prevent pollution at the high seas, subject to Norwegian treaty obligations (§ 74; this is a reference to, i.e., UNCLOS). Under this provision, the Intervention Convention is implemented in Norwegian law through regulation 1997-09-19 no. 1061.


\(^{91}\) In this direction Ot.prp. No. 11 (1979-1980) p. 96-97.

\(^{92}\) This provision also apply on Extension at Svalbard and Jan Mayen , SI No. 245/1997, available in Norwegian at https://lovdata.no/pro/#document/SF/forskrift/1997-08-22-945?searchResultContext=1262. It must therefore apply also at the high seas close to these islands, as anywhere else.
The Svalbard Environmental Protection Act
The Svalbard Environmental Protection Act\textsuperscript{93} is further important. The act applies to the territorial Sea around Svalbard. The liability rules are quite similar to those of the Pollution control Act (§ 95 of the Svalbard Act). The Svalbard Environmental Protection Fund has a similar role as the local authorities in mainland Norway, and can be awarded compensation for conservation measures to compensate for the loss of irreplaceable environmental values. This compensation is close to a penal sanction\textsuperscript{94}.

The Harbour Act
The Harbour Act\textsuperscript{95} gives regulations that apply to vessels in distress or danger. The authorities may order the responsible party, usually the ship-owner, to take action to avoid damage to the environment (§ 38 of the Harbour Act). The authorities may carry out the actions on behalf of the responsible party, and recover their costs in a recourse claim. However, if there is a threat of acute pollution, the Pollution Act take precedent. The Harbour Act § 38 applies in the territorial sea. The provision applies to the territorial sea around Svalbard with the exemption of the right to recover the costs for actions carried out by the authorities\textsuperscript{96}.

Regulation on the Environment in Antarctic\textsuperscript{97}.
The Regulation on the Environment in Antarctic (REA) implements the Liability Annex to the Protocol on environmental Protection to the Antarctic Treaty in Norwegian law. The regulation applies on Queen Maud’s Land and Peter Ist’s Island, and on Norwegian enterprises in Antarctic in general (REA § 2). The regulation provides rules on liability for pollution and limitation of liability.

6.5 Russian Federation\textsuperscript{98}

Introduction
According to the Russian Constitution, the Russian Federation consists of 85 constituent entities: 46 regions, 22 republics, 9 territories, 4 autonomous areas, 3 cities of federal significance and an autonomous region, all of which are equal subjects of the Federation\textsuperscript{99}. The Constitution grants the federal government sole jurisdiction over the status of and activities in the territorial...
sea and the EEZ and on the continental shelf of the Russian Federation\textsuperscript{100}.

**Jurisdiction**

The territorial waters of the Russian Federation extend for 12 NM from the coastline\textsuperscript{101}. The waters of the EEZ of the Russian Federation extend for 200 NM from the coastline\textsuperscript{102}.

**Conventions**


These Conventions have been implemented in federal legislation, in most cases under the Merchant Shipping Code of the Russian Federation (MSC)\textsuperscript{103}.

**Liability**

MSC Chapter XVIII implements the terms of the CLC 1992. MSC Chapter XIX.1 implements the terms of the Bunker Convention. MSC Chapter XIX implements the terms of the HNS Convention, but the latter Convention has not yet come into force. LLMC 1996 is implemented in MSC Chapter XXI. FUND92 is implemented in a separate law\textsuperscript{104}. The Russian Federation is

\textsuperscript{100} Constitution of the Russian Federation, § 71().


\textsuperscript{102} Federal Law N 191-FZ of 17/12/1998 “On the Exclusive Economic Zone of the Russian Federation,” § 1(3).

\textsuperscript{103} Merchant Shipping Code of the Russian Federation N 81-FZ of 30/04/1999.

Polar Shipping

not party to the 2003 Protocol establishing an International Oil Pollution Compensation Supplementary Fund.

In MSC Chapter XXVI on “Applicable Law” it is stipulated that the rules of MSC Chapter XVIII apply to vessel-source oil pollution damage in the territorial sea and EEZ of the Russian Federation. Accordingly, a wider applicability of the CLC 1992 rules than the narrow definitions of “vessel” and “oil” in the CLC 1992 is envisioned.

MSC would prevail as lex specialis over pollution liability provisions in the Water Code. However, if pollution damage occurs within the territorial sea, the Methodology of calculating the amount of damage caused to water objects and to be compensated for the purpose of restoration of the environment adopted under the Water Code may be used. Claims based on the Methodology may be rejected if no evidence of actual costs undertaken or to be undertaken in accordance with a remediation project is provided.

The MSC provisions pertaining to liability for vessel-source pollution apply in the water area of the Northern Sea Route (NSR), which comprises the internal waters, territorial sea, contiguous zone and EEZ of the Russian Federation. The standard of the NSR regulation is specified in the Federal Law on the Internal Waters, Territorial Sea and Contiguous Zone of the Russian Federation as well as the MSC. The Rules of Navigation in the Water Area of the Northern Sea Route adopted under the MSC prohibit the deposit of any oil residues in the waters of the NSR and stipulate related equipment requirements. The same Rules specify the terms of mandatory icebreaker assistance and ice pilotage as measures to ensure the safety of navigation and protection of the marine environment in the NSR water area.

7. Antarctic Waters

7.1 Liability and Compensation for ship-sourced pollution damage in Antarctic Waters – the current position

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108 Water Code applies in the territorial sea but not the EEZ of the Russian Federation, § 1(6).
111 On the Internal Waters, Territorial Sea and Contiguous Zone of the Russian Federation, § 14.
114 “Rules of Navigation in the Water Area of the NSR,” Chapters III and IV, respectively.
In order to clarify the current position on liability and compensation for ship-sourced pollution damage in the Antarctic region, it is important to recognise that, while a number of States claim historic rights of sovereignty over areas of Antarctica, the Antarctic Treaty freezes all new claims to territorial sovereignty in Antarctica. As it appears below, this could lead to some legal conundrums with regard to the subject matter covered by this report.

A number of States, however, do maintain historic strategic, scientific and environmental interests in Antarctica, such as the United Kingdom, which administers the British Antarctic Territory.

Figure 3: National claims to Antarctic Territory

The 1959 Antarctic Treaty came into force in June 1961 after ratification by the twelve countries then active in Antarctic science. It covers the area south of 60°S latitude.

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116 Argentina, Australia, Belgium, Chile, the French Republic, Japan, New Zealand, Norway, the Union of South Africa, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America
The Treaty will remain in force indefinitely with forty-six countries having acceded to it. Consultative (voting) status is open to all countries who have demonstrated their commitment to the Antarctic by conducting significant research. Twenty-eight States currently have consultative status.

The 1959 Treaty does not contain liability and compensation provisions for ship-sourced pollution damage south of 60°S latitude and therefore the adoption of a Liability Annex to the Protocol on Environmental Protection to the Treaty was required. The Liability Annex, which is explained in more detail in this report, is currently not in force.

This report already outlines the extensive scope of the IMO liability and compensation Conventions for ship-sourced pollution damage, along with various national regimes. The IMO Conventions cannot be applied to the waters south of 60°S latitude i.e. where the Antarctic Treaty applies since – for the purposes of liability and compensation arising from ship-sourced pollution damage – the relevant and in force IMO Conventions (namely the Bunker Convention 2001 and the CLC 1992) apply to “pollution damage caused in the territory, including the territorial sea, of a State Party, and in the EEZ of a State Party (or equivalent area)”. Furthermore, none of the Antarctic Treaty States Parties that are also States Parties to these IMO regimes have extended them to their Antarctic territories.

As a result, it would seem that the geographical scope of these IMO Conventions does not extend to the waters south of 60°S latitude simply because there are no coastal States with territorial sea and EEZ or equivalent zones there.

However, as has already been noted in this report with regard to the CLC 1992 and the 2001 Bunker Convention, costs incurred for preventive measures are recoverable under these two regimes even when no spill of oil occurs, provided that there was “a grave and imminent threat” of pollution damage and, more importantly in this context, there is no geographical restriction regarding the jurisdictional zone in which the preventive measures have to be taken. Preventive measures are limited to measures that prevent pollution damage as defined in Art. I.6.

Although the geographical scope of these Conventions applies “to preventive measures, wherever taken, to prevent or minimise such damage”, it appears to be debatable whether they apply if no territorial sea, EEZ or equivalent zones are threatened. Therefore, if a State Party to either of these Conventions undertakes preventive measures in response to a pollution incident south of 60°S latitude, such state is probably not able recover the costs (from the owner/owner’s insurer) under the applicable Convention’s liability provisions.

Further, these two Conventions also prescribe the jurisdiction where actions for compensation against owners and their insurers can be brought. Article 9 of the Bunker Convention which follows the same jurisdiction clause in the CLC 1992 provides that actions for preventive measures taken in the
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territory, territorial sea or EEZ may only be brought in the courts of States Parties. The Conventions do not make it clear, however, where actions may be brought to recover costs for preventive measures taken outside the territory, territorial sea or EEZ of a State Party.

It may be thought that such actions can only be brought in the courts of State Parties to the IMO Conventions but the jurisdiction provisions in the Bunker Convention and the CLC 1992 are silent on where actions to recover costs for preventive measures taken outside the territory, territorial sea or EEZ of a State Party can be brought, and it will be a decision for national courts to determine whether costs for preventive measures taken in waters south of 60°S latitude can be brought in such State Parties.

The IMO Conventions require registered owners of all vessels that are registered in or trade to a State Party to maintain financial security to cover their liabilities under the Conventions, and this is evidenced by a certificate which must be issued by a Convention State Party. The relevant financial security provisions stipulate that insurers shall respond to a claim brought directly against them. Enforcement of these financial security requirements generally takes place in States Parties to the Conventions through the Port State Control or Flag State inspection of ships.

So it is clear that owners of vessels that fall under the scope of these Convention regimes are required to maintain and provide evidence of financial security for their liabilities wherever they arise. This includes the waters south of 60°S latitude, albeit the geographical scope of these Conventions suggests that they would apply to such waters only for the purposes of preventive measures (“...wherever taken...”), and with the abovementioned caveat in terms of actions brought to recover costs for preventive measures where they are taken.

Also, the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation (that deals with coastal States’ preparedness and response to oil pollution incidents) probably does not - in the absence of coastal States in Antarctica – apply there. However, the parties to Annex IV to the Protocol on Environmental Protection to the Antarctic Treaty have agreed on certain basic obligations in this area:

The Antarctic region is not therefore fully covered by the provisions of an IMO regime providing statutory rights of cost recovery or a right to compensation for ship-sourced pollution damage. But by virtue of Article 15 of the Protocol on Environmental Protection to the Treaty, which is in force, the Parties to this Treaty agree to “provide for prompt and effective response action to such emergencies which might arise in the performance of activities for which advance notice is required.” This was illustrated by the US and Argentina who shared the clean-up costs when in the Southern Ocean in 1989 the Argentinean supply and tourist vessel BAHIA PARAISO sank and about 830,000 litres of diesel fuel and lubricants entered the marine environment.

However, the absence of an international, statutory regime governing
liability and compensation for ship-sourced pollution damage in the Antarctic region provided the catalyst for the discussions on a Liability Annex to the Protocol on Environmental Protection to the Antarctic Treaty that were concluded in 2005.

7.2 The Liability Annex to the Protocol on Environmental Protection to the Antarctic Treaty

Introduction

The following is an outline of the relevant provisions of the Antarctic Treaty with specific focus on Annex VI to the Protocol on Environmental Protection to the Treaty in the context of liability arising from environmental emergencies

Background

The Antarctic Treaty, which entered into force in 1961, establishes a mechanism for international co-operation to protect and preserve the continent of Antarctica. There are currently 29 Consultative Parties and 22 non-Consultative Parties to the Treaty. The Parties to the Protocol meet each year to exchange information and discuss matters relating to the Antarctic, as well as to adopt measures to further the purposes of the Treaty.


It should be noted that the Protocol does, amongst other matters:
- Require all human activities undertaken in Antarctica to be planned and conducted so as to limit adverse impacts on the environment,
- Prohibit any activity relating to mineral resources other than scientific research (Article 7 of the Protocol),
- Until 2048, allow for modification only by unanimous agreement by all of the Consultative Parties to the Treaty, and
- Provide that the prohibition on activity relating to mineral resources cannot be removed without a binding legal regime on Antarctic mineral resource activities being in force. As a result, there is no foreseeable prospect of oil exploration or similar activities in Antarctica.

In terms of mineral resource activities, this is in distinct contrast to the situation in the Arctic region.

Annex VI to the Protocol, titled “Liability Arising from Environmental Emergencies” was adopted by the Antarctic Treaty Consultative Parties in 2005 but is yet to enter into force.

The main tenants of the Liability Annex are:

For States Parties to require their State and non-State operators (as defined) to:

(i) Take reasonable preventative measures to reduce the risk of environmental emergencies in Antarctica;

(ii) Establish contingency plans for responses to incidents, and

(iii) Take prompt and effective response action to environmental emergencies arising from their activities

(iv) Establish a liability on the operator for the costs of response action taken by States Parties in the event that the operator fails to take prompt and effective response action,

(v) Establish a limitation regime,

(vi) Require operators to maintain adequate financial security to the limits established and

(vii) Establish a fund to provide for the reimbursement of reasonable and justified costs incurred by a State, for response measures taken, in certain circumstances.

Scope

The Liability Annex applies to “environmental emergencies” in the Antarctic Treaty area which relate to scientific research programs, tourism and all other activities in the area for which advance notice is required under Article VII (5) of the Treaty itself. The Annex differs in this regard from the IMO adopted liability and compensation regimes relating to the carriage of persistent oil, HNS and bunker oil by sea in the sense that it does not refer to, or define, pollution damage per se, rather its scope of coverage applies to the type of incident that may occur i.e. an “environmental emergency”, which is defined as:

“….any accidental event that has occurred and that results in or imminently threatens to result in, any significant and harmful impact on the environment.”

The Liability Annex also defines the term “reasonable” in the context that “Each Party shall require its operators to undertake reasonable preventative measures that are designed to reduce the risk of environmental emergencies and their potential adverse impact”.

Whilst “reasonable” in the context of response measures undertaken pursuant to an incident under the scope of the IMO regimes is included in the definitions of “pollution damage”/“damage” in those regimes, it is not actually defined as it is in the Liability Annex, as follows:

“means measures or actions which are appropriate, practicable, proportionate and based on the availability of objective criteria and information, including:

(i) Risks to the Antarctic environment, and the rate of its natural recovery;
(ii) Risks to human life and safety, and
(iii) Technological and economic feasibility”

Whilst this could be seen, on the one hand, as a means of overcoming the issues that have arisen in the context of ship sourced oil pollution damage (where carried as cargo) in past CLC 1992/IOPC Fund cases as to what is reasonable or not (notwithstanding the non-binding policy of the IOPC Funds in this regard), on the other hand the determination as to what is “reasonable” in the context of the Liability Annex still, inevitably, provides for a degree of subjectivity.

**Liability**

However, where an “operator” fails to take “prompt and effective response action to environmental emergencies arising from its activities”, it shall be liable to pay

1. The costs of response action taken by Parties or
2. When a State operator should have taken action and no response action was taken by any Party, the operator is liable to pay into a fund the costs of the response action that should have been undertaken, and
3. When a non-State operator should have taken prompt and effective action but did not, and no response action was taken by any Party, that operator shall be liable to pay an amount that reflects as much as possible the costs of the response action that should have been taken. Such money is to be paid directly into a fund or to the Party of the operator (who should make “best efforts” to make a contribution to the fund in at least the amount equal to that received from the operator).

In the event that an operator does not take prompt and effective response action, then the Annex encourages the Party of the operator or other Parties to do so and the Annex provides that such a Party may bring an action against a non-State operator, for the costs incurred, in the courts of a Party (which will be determined by whether the operator is incorporated in a Party or not).

Separate provisions apply in the case of State operators.

**Basis of Liability**

The Liability Annex provides for strict liability of the operator in terms of paying the costs of response action taken by a Party or Parties.

The onus however, and indeed it is a requirement to be imposed by the Parties, is for the operator to take “prompt and effective response action to environmental emergencies arising from the activities of that operator” in the first instance.

**Time Bar**

Such actions are to be brought within three years of the commencement of the response action or within three years of the date on which the Party bringing the action knew or ought reasonably to have known the identity of the operator, whichever is the later. However, under no circumstances shall an
action (against a non-State operator) be commenced later than 15 years after
the commencement of the response action.

The Fund
The Annex provides that a Fund is established, to be administered by the
Antarctic Treaty Secretariat, to provide for the reimbursement of the
reasonable and justified costs incurred by a Party in taking response action
where an operator does not do so.

Reimbursement from the Fund will be generated by proposals made by
the Party or Parties concerned to Consultative meetings of the Antarctic Treaty.

Limitation
Some debate took place during the final negotiations of the Annex as to
whether distinct limits should be included in the final text or whether the
operator’s right to limit liability should be linked to the limits contained in the
1976 global limitation regime (International Convention on Limitation of
Liability for Maritime Claims (LLMC)), as amended. Following this latter
approach would have ensured that the limits contained in the Annex keep pace
with any increases to the 1996 LLMC Protocol, such as the increases agreed
by the IMO in 2010 and that are due to become effective in June 2015.

However, the agreement reached during the final negotiations took the
former approach and a specific, sliding scale of limits based on the tonnage
of the vessel concerned was included in the text of the Annex that reflects the
non loss of life/personal injury limits contained in the 1996 LLMC Protocol
as adopted in 1996, but without taking account of any future increases such as
those agreed in 2010.

Since such limits are prescribed in the Liability Annex, they would not be
affected by any unpaid balance of claims with regard to loss of life or personal
injury claims in the same manner as the corresponding limits in Article 6 of
LLMC.

There is, however, a provision for the Antarctic Treaty Consultative
Meetings to review the limits every three years and for amendments or
modifications to be made in accordance with the measure adopted in the
Antarctic Treaty itself.

Financial Security
Operators are required to maintain financial security to cover their
liability up to the applicable limits, which can be in the form of insurance or
other financial security such as the guarantee of a bank or similar financial
institution.

Unlike the IMO regimes, the Annex does not provide for State
certification, the right of direct action against the financial security provider
or the waiver of policy defences save for wilful misconduct of the assured. It
is unlikely therefore that a blue card/COFR type system will be required by
Parties for the purposes of compliance with the financial security requirements
of the Annex.
Entry into Force
The Liability Annex will become effective following ratification by all 28 Consultative States to the Treaty. At the time of the last consultative meeting of the Antarctic Treaty, 13 States have ratified. The official list of ratifications can be found at http://www.State.gov/documents/organization/189998.pdf.

8. Non-regulated geographical areas

There are “white spots” on the marine chart; i.e. areas that are outside the geographical scope of the various Conventions such as the High Seas (see the illustration in section 2. above that identifies the High Seas areas).

Norway would appear to be the only State that has extended its application of the CLC 1992 (as implemented nationally) to oil pollution on the High Seas and that benefits both the environment and the polluting shipowner. The practical application of these rules remain unclear.

However, if pollution threatens a coastal State a legal framework is available because the Intervention Convention 1 applies if pollution is threatening a CLC 1992 State. Equally, if US waters are threatened OPA 90 would be applicable. Although current traffic in the Arctic does not affect the High Seas it is a fact that if the spill occurs in such area and does not spread it will not be governed by any of the existing legal regimes.

As a matter of international law, it seems that every state has the right to combat pollution on the high seas, but no existing legal regime appears to provide for compensation and logically such response must be for the account of the state that responds. Hence, there appears to be no legal basis for making a claim against the polluter. Instead, possibly an inter-state discussion can arise under UNCLOS art. 194. Art. 194 provides that

“States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.”

9. The Polar Code

In the nature of preventive measures, the Polar Code is highly important and should be mentioned in this context by way of background information. The code lends itself to being incorporated in insurance policies and commercial contracts such as charter parties as rules to be adhered to and commercial standards.

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118 Contributed by Lars Rosenberg Overby, Hafnia Law Firm.
Background
On 15 May 2015, the IMO adopted the environmental provisions of the International Code for Ships Operating in Polar Waters (the “Polar Code”), which will now require vessels in polar waters to comply with various safety and environmental requirements imposed by the Code. The Polar Code, which is expected to take effect on 1 January 2017, contains detailed requirements relating to safety, design and construction, operations, training, and the prevention of environmental pollution. Additionally, the Polar Code includes recommendations and guidelines relating to the mandatory portions of the Code. Major highlights from the Polar Code are summarized below.

Mandatory Safety Measures
Certificate and Survey
Under the Polar Code, vessels fall within one of three categories: Category A ships are vessels designed for operation in polar waters in at least medium first-year ice (70 cm to 120 cm thickness); Category B ships are non-Category A vessels designed for operation in polar waters in at least thin first-year ice (30 cm to 70 cm thickness); Category C ships are vessels designed for operation in open water or in ice conditions less severe than those described in Categories A and B. Many provisions of the Polar Code are detailed according to the category of the vessel.

All vessels to which the Polar Code applies must have a valid Polar Ship Certificate on board. The Certificate will be issued after an initial or renewal survey that will classify the vessel as either a Category, A, B, or C ship. The Certificate requires an assessment to establish procedures or operational limitations, which would take into account the anticipated range of operating and environmental conditions and hazards the vessel may face in polar waters. Such conditions and hazards may include operation in low ambient air temperature, ice, and high latitude, the possibility of abandoning ship onto ice or land, remoteness, and the effect of polar conditions on human performance. For vessels operating in low ambient air temperature, systems and equipment required by the Code must function at the polar service temperature (“PST”), which is a temperature specified for a vessel that must be set at least 10°C below the lowest mean daily low temperature for the intended area and season of operation in polar waters. Survival systems and equipment must be fully operational at the PST for the maximum expected rescue time.

Vessels must carry a “Polar Water Operational Manual,” which must include information on the vessel’s specific capabilities and limitations, procedures to be followed in normal operations in order to avoid exceeding the vessel’s capabilities, and procedures to be followed in the event of an incident in polar waters or when conditions exceed the vessel’s capabilities.

Ship Structure and Machinery Installations
For vessels intended to operate in low air temperature, materials used must be suitable for operation at the vessel’s PST. The Code provides
additional requirements depending on whether the vessel is classified as a Category A, B, or C ship. The Code also includes provisions to ensure sufficient subdivision and stability when the vessel is either intact or damaged. The Code imposes requirements relating to stability, vessel design, and ice removal equipment. Additionally, the Code includes requirements to ensure that the vessel maintains weathertight and watertight integrity, and to ensure that machinery will function in polar conditions, taking into account factors such as ice accretion and snow accumulation.

**Fire/Safety Protection and Life-Saving Appliances and Arrangements**

Fire safety systems and appliances must be protected from ice and snow and must account for the need for persons to wear bulky and cumbersome cold weather gear. If the vessel will operate in low ambient air temperature, fire safety systems and appliances must be effective under the PST. The Code also includes requirements to facilitate safe escape, evacuation, and survival in polar conditions. Among these are requirements that adequate thermal protection be available for each person aboard, and that all lifeboats be partially or totally enclosed.

**Safety of Navigation, Communication, and Voyage Planning**

Vessels must have means of receiving and displaying current information on ice conditions in the area of operation, have the ability to visually detect ice while operating in darkness, and must have two non-magnetic means to determine and display the vessel’s heading. If ice accretion is likely, there must be a way to prevent the accumulation of ice on antennas required for navigation and communication. The Code also contains requirements to ensure effective communication for ships and survival craft in both normal operations and emergency situations.

When planning a voyage through polar waters, the master must take into consideration the Polar Water Operation Manual, current information on ice and icebergs in the vicinity of the intended route, statistical information on ice and temperatures from previous years, and information and measures to be taken when marine mammals are encountered relating to known areas with densities of marine mammals, including seasonal migration areas.

**Manning and Training**

The Code requires companies to ensure that masters, chief mates and officers in charge of a navigational watch on board ships operating in polar waters have completed appropriate training. The extent of training depends on the ice conditions and the whether the vessel is a tanker, passenger ship, or other type of vessel. Every crew member must be familiar with the provisions in the Polar Water Operation Manual relevant to their assigned duties.

**Mandatory Pollution Prevention Measures**

The discharge of oil or oily mixtures from any ship into Arctic waters is prohibited by the Code. This prohibition does not apply to clean or segregated ballast. The Code also requires that oil fuel tanks of Category A and B vessels
be separated from the outer hull. Discharge into Arctic waters of noxious liquid substances or any mixture containing such substances is also prohibited. The discharge of sewage and garbage within polar waters is prohibited unless performed in accordance with MARPOL Annex IV and V, respectively, and with additional requirements specified in the Code.

10. Emergency Preparedness and Response Measures

General comments

Whilst each Arctic Coastal State has its own command centres and response set-up, the question is whether the existing aircraft, vessels, equipment and resources are sufficient to respond to a major event in the Polar regions. If not then additional support has to be sourced and chartered in for the occasion, and that will in turn cause delays and increase costs dramatically. Experience with operations in remote areas shows that the costs of e.g. a wreck removal will multiply if personnel and equipment have to be mobilised. Also, in many scenarios there will be not local man power to rely on as opposed to the “ordinary” oil spill scenario.

The lack of infrastructure would be a significant liability in the event of a large oil spill. The vastness of the Arctic inherently makes it difficult to calibrate the response capability properly in any event though.

The Arctic oil spill counter measures are mechanical containment and recovery, biodegradation, chemical dispersants and in situ burning. These are traditional and tested methods but the special conditions in a Polar environment seriously hamper these counter measures and further critical time will be lost due to the long distances that have to be overcome in order to get to the site. Further, oil that has been collected must be stored and disposed of however there are no such facilities in the area. There are concerns as to whether a large spill can be effectively mitigated in the Arctic and some maintain that even if these methods are used in combination they will still only remove a fraction of the oil that has spilled.

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120 Natural Research Council: *Responding to Oil Spills in the U.S. Arctic Marine Environment* p. 9.

121 Natural Research Council: *Responding to Oil Spills in the U.S. Arctic Marine Environment* p. 93
Figure 4: **The behaviour of oil in ice.**

Source: AMAP

**The Arctic Council Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic**

Whilst the Agreement on Cooperation on Marine Oil Pollution, Preparedness and Response in the Arctic from 2013 by the members of the Arctic Council is a useful instrument its impact depends entirely on the vessels, equipment etc. in the pool. The agreement includes non-binding operational guidelines. The relationship between this instrument and the compensation regimes is likely to be that the member state that has sourced some of its response measures under this agreement will the claim expenses incurred in the process from those liable after having paid the “contributing” member states in accordance with the tariffs. As such, the member states are supposed to be compensated directly from the state seeking assistance rather than having to make claims themselves.

**International coast guard forum for cooperation in the Arctic**

In late October 2015 a new international forum for cooperation in the Arctic was formed. The new Arctic Coast Guard Forum will include coast guards or similar agencies from Canada, Denmark, Finland, Iceland, Norway, Sweden, Russia and the United States. The Arctic Coast Guard Forum is designed to be an operational entity that can “leverage collective resources and coordinate communications, operational plans, and on-the-water activity”\(^{122}\).

\(^{122}\) Source: Council on Foreign relations (http://blogs.cfr.org/davidson/2015/11/02/u-s-coast-guard-unveils-a-new-model-for-cooperation-on-top-of-the-world/).
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Canada/ US bilateral cooperation

Under the Great Lakes Water Quality Agreement, Canada and the US have an annex that concerns joint oil spill response that applies to the Arctic. There are biennial exercises.

Coastal state summaries

Denmark (Greenland)

Greenland's local government is responsible for pollution response within its territorial waters whereas the Danish Arctic Command is responsible for this task outside this area. A report published on 11 September 2013 by Statsrevisorerne (a permanent supervisory body under the Parliament) strongly criticised the capacity to respond to environmental incidents in the Arctic. Work is in progress to improve the response measures and currently (January 2016) an extensive risk assessment and analysis as to how that risk can best be managed is being conducted by the Danish authorities. Greenland has established its own national organisation, Greenland Oil Spill Response (“GOSR”) to meet the challenges.

Canada

Canada's ship-source spill preparedness and response capabilities in arctic waters were extensively reviewed in 2014 by a Tanker Safety Expert Panel which proposed a series of recommendations to “set the course to improve ship-source prevention, preparedness and response in the Canadian Arctic”. These include modernizing Canada's arctic navigation systems, accelerating the collection of bathymetric data and hydrographic surveys, reviewing scientific data on hull strengths and safe ice loads, specified training of ice navigators and vessel officers, requiring Shipboard Arctic Spill Response Plans, developing arctic oil handling facilities and spill prevention, preparedness and response measures and advancing Canada's Coast Guard capability in the Arctic. These recommendations remain under review by Transport Canada but will very likely set the basis for further legislative and regulatory initiatives to significantly advance Canada's arctic waters response capabilities.

123 The information provided is not exhaustive and the national response capabilities are likely to change over time. The reader is invited to research the position in the present in order to get updated information.

124 See the Panel report (Phase II) to the Minister of Transport, September 30, 2014 at www.tc.gc.ca/media/documents/mospr/TC-Tanker-E-P2.pdf. See also the Report of the Office of the Auditor General of Canada http://www.oag-bvg.gc.ca/internet/English/att_e_att_e39878.html, October, 2014, which critically examined whether Transport Canada, Fisheries and Oceans Canada (including the Coast Guard and Hydrographic Service) and Environment Canada “adequately support safe marine navigation in Canadian arctic waters”. The Report points out a number of shortcomings in Canada's approach to safe marine transportation in the arctic, and a lack of long-term national vision or coordinated departmental strategies to support such transportation.
Russia

Rosmorrechflot, the Federal Agency of Maritime and River Transport under the Ministry of Transport of the Russian Federation, is the executive body in charge of the general administration of the federal system for the prevention and removal of marine oil spills. Oil spill contingency plans and removal activities are managed, at the federal level, by Gosmorspassluzhba, the State Marine Accident and Rescue Coordination Administration of Russia and, at the regional level, by the Marine Rescue Coordination Centres (MRCC). It is required that a marine oil spill is reported immediately to the nearest MRCC. Ports, oil terminals and harbours maintain local contingency plans. If local and regional oil spill removal capabilities are not sufficient, Gosmorspassluzhba mobilizes the federal Tier 2 and Tier 3 capabilities. For Tier 2 and Tier 3 oil spills, dispersants and all other oil spill combat methods are permitted, but in-situ burning and dispersant use require authorization by the Ministry of Health, the Ministry of Natural Resources and the Fisheries Committee.

Norway

The Norwegian Coastal Administration ("NCA") is the government agency responsible for the national pollution preparedness and response in Norway with regard to acute pollution including oil spill at sea. The NCA reports to the Ministry of Transport and Communications. NCA administers the national system for prevention and response to marine oil spills, and coordinates the national response system. The system includes three tiers of response, private, municipal and national. NCA supervises response carried out by private parties and municipal authorities. NCA has a 24/7 duty team handling cases of acute pollution around the clock. In case of larger oil spills, NCA may take charge of the response operation through an NCA command centre established in accordance with a national contingency plan.

The responsibility for the national response on Svalbard is placed both on the Governor of Svalbard and on NCA. A separate contingency plan is issued for Svalbard. For the islands of Jan Mayen and Bear Island, NCA will be in

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125 “Statement Concerning the Functional Subsystem of Coordinating Activities for the Prevention and Removal of Spills of Oil and Oil Products from Vessels and Structures regardless of their Departmental Identity or Nationality,” Russian Ministry of Transport Order N 53 of 06/04/2009, §§ 7(1) and 8.
126 “Statement Concerning the Functional Subsystem of Coordinating Activities for the Prevention and Removal of Spills of Oil and Oil Products from Vessels and Structures regardless of their Departmental Identity or Nationality,” Russian Ministry of Transport Order N 53 of 06/04/2009, §§ 7(1) and 8.
127 For a summary in English, see the entry for the Russian Federation at the website of the International Tanker Owners Pollution Federation Limited (ITOPF) at http://www.itopf.com/knowledge-resources/countries-regions/countries/russian-federation/.
128 Contributed by senior legal advisor Kjersti Tusvik of the Norwegian Coastal Administration.
charge of the response but may include the resources of Svalbard in the response operation.

In the northern areas, Norway has implemented a number of risk-reducing measures such as increased vessel surveillance, mandatory ship routing, mandatory piloting services and increased information exchange. Through the Arctic Council working group EPPR, Norway is working actively to follow up the two major agreements on oil spill preparedness in the Arctic, the Arctic Oil Spill Response Agreement and the Arctic SAR Agreement. The government has funded a project within the framework of the Arctic Council EPPR that aims to further strengthen oil spill response in the Arctic. The project is managed by NCA and will give recommendations on oil spill equipment and risk-reducing measures in the Arctic. The project will give its final report in 2017.

NCA maintains four emergency towing vessels, including two operating the northern areas of the mainland coast. In addition, through cooperation agreements, NCA have access to resources from other public and private parties, including the Coast Guard, the Norwegian Military Forces, The Norwegian Clean Seas Association for Operating Companies (NOFO), and has access to assistance from neighbouring countries and EU (EMSA). A number of private off shore vessels and coast guard vessels are equipped with oil spill equipment owned by the authorities. In order to cover the northern areas that are outside the normal AIS coverage, Norway has employed two satellites orbiting the northern areas. Data from the satellites are administrated through a national centre in Vardø and distributed to relevant authorities. Information exchange and handling are improved by the work of BarentsWatch, a collaboration between government agencies and research institutions working to collect, develop and share knowledge of coastal and marine areas close to Norway.

In 2015, a white paper on the Antarctica was handed over to the parliament. In addition, a separate white paper was issued on the Bouvet Island. It is expected that a white paper on pollution preparedness and response will be handed over to the parliament during 2016. The white paper may further outline the government’s strategy for the pollution preparedness and response in Norway including the polar areas.

**USA**

It has been reported that Coast Guard officials have warned that the U.S. government does not have the equipment or infrastructure needed to respond to emergencies in the Arctic the Coast Guard’s Arctic Strategy describes the operational challenges to include vast distances, extreme weather, and limited infrastructure. The closest U.S. deep-water port to Barrow, Alaska, the main

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population center, is more than 1,100 miles away in Dutch Harbor and there are only two small commercial airports in the U.S. Arctic at Barrow and Deadhorse, Alaska. Other challenges include poor radio propagation, partial satellite coverage, geomagnetic interference with navigation equipment, and limited cellular networks.

**Arctic Council SAR Agreement**

Whilst the focus is different, it should be mentioned that there is also an Arctic Search and Rescue Agreement among the members of the Arctic Council. The illustration below serves to illustrate the vastness of the area that the agreement applies to.

Figure 5: **Geographical scope of the Arctic Council SAR Agreement.**

Source: Wikimedia

11. **Discussion**

The Arctic States (Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden and the USA) have each identified activities in their Arctic region, which they consider to present risks due to location or operation. These risks are associated with oil and gas activities such as exploration, production, and marine transportation of the same. The threats involve release of oil, radiological and other hazardous materials from exploration activities and related shipping transportation and also in relation to shipping, abandoned and
sunken vessels have the potential to leak oil and other hazardous materials. There are a variety of Conventions and agreements at international, multi-lateral and bi-lateral level to address these risks. The most significant of these have been described above in section 5.

Compensation for pollution damage caused by spills from oil tankers is governed by the international regime originating from 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). In the United States, OPA 90 and the associated provisions apply.

Many of the international Conventions relate to emergency prevention, preparedness or response (for example, the International Convention for the Protection of Pollution from Ships (MARPOL 73/78), the International Convention on Oil Pollution Preparedness Response and Cooperation (OPRC 1990) and the Protocol On The Preparedness, Response and Cooperation On Pollution Incidents by Hazardous and Noxious Substances (OPRC-HNS Protocol 2000).

Pollution by non-persistent oil and other substances is also subject to national regulation that comprises liability, responsible parties and recoverable losses even though the HNS Convention is not yet into force.

As such there is a comprehensive network of international liability and compensation regimes for the Arctic region generally which would apply to cover damage caused by spills from oil cargo and vessels’ bunkers (the CLC 1992, Fund Convention and Bunker Convention) when this occurs in the territorial sea and EEZ of a Contracting State party, irrespective of the flag of the ship/place of registry and whether or not they are contracting State parties.

Further, the Intervention Convention 1969 and the Intervention Protocol of 1973 permits the Arctic States to take action even beyond the EEZ, in the High Seas to prevent damage to their coastline when there is a “grave and imminent threat” of damage by pollution. The costs in this respect are recoverable from the CLC 1992/Fund Conventions/Bunker Convention when this concerns oil pollution.

Even if the full CLC 1992 compensation regime (including the strict liability, compensation limit, insurance requirements, direct action, etc.) applies to oil pollution incidents in the Arctic, there may still be substantive issues which deserve some consideration with regard to how well the ‘regular’ rules of the CLC 1992 cater for the special circumstances in the Arctic area. First and foremost, the question is whether the monetary compensation schemes will be sufficient to meet the costs of responding to a major oil spill considering a likely cost multiplier of more than 10 compared to an oil spill in e.g. Western Europe. The experience with major oil spills in the Arctic are limited to the EXXON VALDEZ incident in 1990 for which the reported clean up cost alone amounted to USD 2.5 billion. However, experience with other major – not even oil tanker – casualties in remote areas (e.g. the OLIVA in
2011 on Tristan da Cunha and the CULLUK in Alaska in 2012) suggest very high costs of responding to a spill.

The point is that pollution response measures need to be mobilised and brought in from afar and in many instances national response options will likely be inadequate and must therefore be supplemented by resources procured on market terms. That will escalate costs just as any other operation in a remote area. Further, the likely lack of local manpower will undoubtedly cause further costs to accrue.

By way of example, Norway has had to accept that the wreck of PETROZAVODSK (a fishing vessel) on the Arctic island Bear Island south of Svalbard cannot be removed due to the prohibitive costs involved in such operation. This raises the question if – where the CLC 1992 Convention applies – member States are restricted compensation-wise in the actions they can take, simply because the costs of the measures and the likely results are disproportionate. In the affirmative, it is debatable whether those who suffer losses due to an oil pollution in the Arctic can be adequately compensated.

Also, the assessment of the reasonableness of reinstatement costs and preventive measures may need specific criteria in the Arctic environment (in view of the costs involved in removing a wreck, or emptying tanks in remote Arctic areas, practical reinstatement options or the costs of the scientific studies of the conditions, baselines, recovery etc.). This is not least because the absence of solid experience with pollution in polar environments makes it difficult to assess if restoration is indeed possible and if the permitted claims by way of “Oil Pollution Damage” offer sufficient remedy because impairment of the environment under the CLC 1992 Convention is restricted to reinstatement costs. If it is impossible to recreate the ecological habitat or something similar, can it then be reasonable to incur costs in this regard under the CLC and Fund Convention regime? Clearly, it is not for lawyers to determine the ecological possibilities.

With respect to exemptions from liability, navigation in the Arctic is more likely than regular tanker trade to give rise to exemption under CLC 1992 Article III(2)(d) on navigational aids (including charts). This, in turn, increases the Arctic coastal States’ exposure to liability under the CLC 1992 (though such incidents will still be covered by the Fund).

These matters may not need amendments of the Conventions, but could at least to a significant degree be addressed by a less formal interpretation of guidelines and changes to the IOPC claims manual.

Funding and specific insurance requirements are also relevant issues. Outside the scope of the CLC and Bunker Convention regimes only the vessels’ P&I insurance cover will – in principle – be available to absorb the losses and then subject to the limitation LLMC 1996 (where in force).

There is also notionally a regime agreed at international level for liability and compensation for damage caused by HNS but which is not yet in force.
Until such time when it enters into force, the limit of liability for damage caused by HNS will be governed by LLMC 1996 where this is in force or national law. The LLMC however does not regulate liability for such damage and it could be said therefore that there is vacuum until the HNS Convention is in place although national marine environmental legislation will cover such vacuum.

As regards the High Seas, there is an issue as to how pollution damage should be dealt with in the interest of the International community as such. Whilst it appears that there currently are few ice free areas beyond 200 NM (High Seas) it seems that an instrument similar to the Liability Annex to the Protocol on Environmental Protection to the Antarctic Treaty (see section 7.2 above) may be appropriate in the Arctic.

A more simple approach would be to copy the Norwegian model of extending the application of the CLC 1992 (as implemented nationally) to oil pollution on the High Seas as that would benefit both the environment and the polluting ship owner.

The vastness of the area is a great challenge from a response perspective and possibly the problem could to some extent be managed by establishing transport corridors and restricting navigation to certain areas. A ban of HFO modelled on the Antarctic solution also offers itself for consideration in some areas.

The United States aggressively enforces its pollution liability laws. In recent years, it imposed stringent operating restrictions on companies seeking to conduct oil exploration in arctic waters on its continental shelf in order to protect the environment and to prevent interference with traditional subsistence activities of native Alaskans. If a vessel had a significant discharge in arctic waters subject to the jurisdiction of the United States, it is anticipated that the United States would demand a full response to the incident, and would pursue substantial claims for natural resource damages and civil penalties. The lack of adequate response resources or infrastructure from which to mount a response would hamper the ability of a vessel operator to respond to such a spill.

The Antarctica strongly needs ratification of the above mentioned liability annex in order to clarify the current uncertain legal position.

12. Conclusions and recommendations

The legal infrastructure in the Arctic is very good technically speaking in the sense that the coastal states have in place legislation that deals with pollution, liability, calculation of losses, responsible parties and funding.

A major oil spill may reveal the need for considering the current regulation of “pollution damage” in the CLC 1992 convention in terms of what measures are “reasonable” and as regards impairment of the environment. The representatives of the International Group of P&I Clubs and the International Chamber of Shipping do not believe that the analysis in section 11 of the report supports this conclusion.

It is possible that a major oil spill will stress the monetary limits of the
CLC and Fund Convention regime although the Supplementary Fund may be sufficient in most instances. This view is not shared by the representatives of the International Group of P&I Clubs and the International Chamber of Shipping who consider the two funds in combination with the vessels compulsory P&I cover adequate.

It is an open question how the requirement that environmental reinstatement cost must be reasonable – in the context of the CLC and Fund Convention regime – will be applied by courts in the relevant coastal states and the IOPCF to such reinstatement attempts in the special Arctic environment. Clarification of the recoverability of reinstatement costs under the CLC and Fund Convention regime would therefore assist the coastal States. The representatives of the International Group of P&I Clubs and the International Chamber of Shipping disagrees with this conclusion.

These observations are even more apparent considering the current response facilities and equipment that are available in the Arctic.

Russia would benefit from participating in the Supplementary Fund Protocol to the Fund Convention 1992 should a major oil pollution occur. So would Iceland.

There is a gap with respect to the High Seas in the Arctic but this is not problematic at the moment. In time, the issue should be addressed in the interest of the International community.

As regards the United States there is no indication that it will join the CLC and Fund Convention regime, and will continue to enforce its domestic laws governing spills, including OPA 90.

The Antarctica is exposed to legal uncertainty in the event that a pollution incident occurs until the liability Annex to the Protocol on Environmental Protection to the Antarctic Treaty is ratified. Therefore, it is specifically recommended that the Antarctic Treaty Protocol States ratify the Liability Annex described in section 7 above.

The Polar Shipping Working Group proposes that the report is submitted to the IMO Legal Secretariat and discussions take place with the IMO Legal Secretariat to consider further.

Finally, it would be natural for the coastal state IWG members to provide their competent local authorities with a copy of this report.

Copenhagen, 2 February 2016
POLARWORTHINESS – A NEW STANDARD OF SEAWORTHINESS IN THE POLAR CONTEXT?

PETER J CULLEN*

Mr. Cullen’s presentation will speak to issues of seaworthiness arising in the context of commercial shipping in Polar waters (contracts of carriage including bills of lading and charter parties, insurance, regulations, etc). The presentation will review the risk analysis approach favoured by the authors of the Polar Code and its implications for risk management in such waters, particularly as it pertains to the defence of “due diligence”. It will also touch upon similar issues arising under a number of international conventions whose application is currently uncertain in the Polar context. Mr. Cullen’s thesis – that the Polar Code elevates the applicable standards of fitness to a new level described as “polarworthiness” – will point out the challenges faced by owners, operators, regulators and shipping interests in meeting and abiding by such standards.

* Partner with Stikeman Elliott LLP in Montreal, Canada, Titulary Member of the CMI, Member of the CMI IWG on Polar Shipping
THE LOAD LINES CONVENTION
AND ARCTIC NAVIGATION

ALDO CHIRGOP*

This presentation updates earlier work of the CMI’s International Working Group for Polar Shipping since CMI Hamburg 2014. In 2014-2015 the International Maritime Organization (IMO) adopted the Polar Code and important amendments to the International Convention for the Safety of Life at Sea, 1974, as amended and International Convention on the Prevention of Pollution from Ships, 1973/78, as amended. The Polar Code provides for new international standards and rules for polar shipping to become effective on 1 January 2017. The Code has not addressed load lines for ships. The International Convention on Load Lines (LLC), 1966, as amended, is a key maritime safety instrument establishing rules for the limits of loading of ships on international voyages and does not contain an annex dedicated to polar shipping, unlike the case of other maritime trading regions. The presentation explains the implications of what appears to be a gap in maritime safety regulation for polar shipping. The presentation concludes with the recommendation that the Comité Maritime International consider advising the IMO to study the LLC Convention with regard to its application to polar shipping and whether the development of a dedicated polar annex is appropriate.

* Chair, International Working Group (Polar Shipping).
THE POLAR CODE

STEVEN D. POULIN

Abstract:

Rear Admiral Steven D. Poulin joins a panel titled “Status and Issues with the Polar Code.” As the Judge Advocate General and Chief Counsel of the United States Coast Guard, Rear Admiral Poulin is a leader within the U.S. delegation to the International Maritime Organization (IMO). The Polar Code is a major accomplishment of IMO, culminating in over a decade of challenging negotiations. It will greatly improve safety, security, and environmental protection for commercial shipping in Polar waters. However, certain gaps and challenges remain that the international maritime community must address. Maritime-related industry must play a key role in this effort. For instance, the Polar Code is ship-focused with mandatory provisions generally limited to the applicability and scope of the parent conventions (SOLAS and MARPOL). As such, the Polar Code does not address issues including traffic schemes, geographic access requirements, pollution categories not already regulated under MARPOL, or the lack of response resources (e.g., search and rescue, pollution, salvage, towing services, or icebreaking services). The Code, likewise, does not address the lack of communications, navigation information, and shore-side infrastructure. The Polar Code bolsters standards for ice-strengthened ships, safety risk assessments, operational planning, shipboard equipment, training, and certification. The Code further tightens regulations for waste streams regulated by MARPOL to enhance protection of these pristine cold water environments. Yet, achieving our desired goals to promote safety, security, and stewardship only begins with the Code. The Code is an important foundation, but there is much more to do – and we all have a shared responsibility to do it.
POLAR SHIPPING REGULATION

ALEXANDER SKARIDOV

Abstract

The presentation prepared by Capt/Prof. Alexander Skaridov explores whether there is a need for joint efforts in strengthening and binding shipping regulations for the safety of navigation and protection of the Arctic marine environment in the areas of Bering strait before the expected increasing of vessel traffic.

The various maritime, geopolitical and legal issues regarding the regime of the Arctic Ice-covered and regulations for ships operating in Arctic Ice-covered waters used to be analyzed and discussed at least 20 years. Although currently there are no reasons to believe that the Arctic legal regime will be updated in the measurable future to meet all navigational challenges.

In the same time, it’s evident that in the nearest future Arctic merchant navigation activity will grow regardless of “global warming” and heaviness of the ice cover. In this case the increasing of the maritime cargo flow, especially in the narrow waters could have the increasing impact on the safety of navigation and protection of the marine environment.

Among precautionary measures to ensure the safety of navigation the author discuss the possibility of establishing navigation control systems and traffic separation zones in the Bering Strait and adjacent areas as the most vulnerable part for EW passage.
LESSONS FROM THE ANTARCTIC

DAVID BAKER¹

Abstract

The Antarctic has been said to symbolise the greatest expression of international peace in our world today, with the entire continent being formally designated “a natural reserve, devoted to peace and science”, putting all territorial claims on hold. A mechanism for international co-operation to protect and preserve the continent of Antarctica was established by means of the Antarctic Treaty (entered into force in 1961) and, in 1991, a Protocol on Environmental Protection to the Treaty was adopted to provide comprehensive protection of the Antarctic Environment. Whilst tourism is a legitimate activity under the Treaty, Antarctica receives relatively few visits compared to other wilderness destinations, particularly in relation to its size. The number of estimated visitors to Antarctica in 2015/16 of 40,029 (nearly all arrive by ship) is down from a peak of 46,265 in 2007/08², although there is always a concern that tourist operations in the Antarctic may have a cumulative impact on the environment. In 2005, the Antarctic Treaty Consultative Parties adopted Annex VI to the Protocol titled “Liability Arising from Environmental Emergencies”, although it is yet to enter into force since the requisite number of ratifying States has not yet been achieved.

The presentation focuses on that liability regime for the costs of response action to environmental emergencies arising from activities in the Antarctic Treaty Area; whether it is ‘fit for purpose’, and incident data and insurance cover for vessels operating in Antarctic waters. The presentation will also cover a number of the important features of the Liability Annex, and will conclude that there are substantive elements that are missing from the Annex that are contained in the IMO liability and compensation regimes and that could be considered as beneficial for the purposes of cost recovery.

¹ International Group of P&I Clubs.
² IAATO Antarctica Tourism Fact sheet 2015/16.
SHIP FINANCING SECURITY PRACTICES

Letter 29 March 2016 of the President of the CMI enclosing a Questionnaire prepared by the IWG

A round up on the activity of the IWG, by Ann Fenech
COMITE MARITIME INTERNATIONAL

PRESIDENT

29 March 2016

Presidents of NMLAs

Dear President

Questionnaire - Ship Financing Security Practices

I attach a Questionnaire which the International Working Group on Ship Financing Security Practices has prepared. This is one of the documents that delegates to the New York Conference will need to have available if they attend the session which is scheduled for the afternoon of Wednesday, 4 May 2016.

Yours sincerely

Stuart Hetherington
CMI International Working Group
Ship Financing Security Practices - Questionnaire

1 MARITIME AND OTHER CONVENTIONS

1.1 Has your jurisdiction ratified the 1952 and/or the 1999 Arrest Convention or neither?

1.2 If your jurisdiction has not ratified either of the aforementioned conventions, what categories of claim can be brought by way of arrest 1 of a vessel?

1.3 In particular, can arrest be made:
   (a) by a mortgagee of a vessel registered under the laws of your jurisdiction?
   (b) by a mortgagee of a vessel registered under the laws of a different jurisdiction?

1.4 Has your jurisdiction ratified the 1926 and/or the 1993 Maritime Liens and Mortgages Convention or neither?

1.5 If your jurisdiction has not ratified either Maritime Liens and Mortgages Convention does your jurisdiction recognize foreign maritime liens? If so what types of claim are recognised as maritime liens?

1.6 Does the law of your jurisdiction incorporate the 1961 Hague Convention Abolishing the Requirement for Legalisation of Foreign Public Documents?

2 NATURE OF THE SHIPS' REGISTER

2.1 Is the ships' register 2 in your jurisdiction a register of legal title?

2.2 Does the ships' register in your jurisdiction (whether or not a register of legal title) provide for registration of the interest of a demise charterer in circumstances where legal title is registered in another jurisdiction (the 'underlying register').

2.3 If your jurisdiction does provide for registration of the interest of a demise charterer, does it provide for registration or notation of a mortgagee registered on the underlying register?

2.4 Does your jurisdiction allow a vessel registered in the ships register in the name of the holder of legal title also to be registered in another jurisdiction in the name of a demise charterer? If so is such registrations permitted when the vessel is subject to a mortgage registered in the ships' register in your jurisdiction and is the consent of the mortgagee required?

2.5 Please describe (briefly) the criteria for registration of a vessel on the ships' register in your jurisdiction, with particular reference to eligibility or not for registration of different types of assets employed in offshore oil and gas exploration, production, processing and storage.

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1 The term 'arrest' is used throughout for convenience but it is acknowledged that this may not be a concept known to the laws of all jurisdictions. If in your jurisdiction the equivalent concept is attachment or something else, please briefly explain.

2 The term 'ships register' means a specialist register only for ships.
3 FORMALITIES FOR MORTGAGE REGISTRATION

3.1 Does a mortgage in respect of a vessel registered in your jurisdiction need to:

(a) attach documents, such as a loan agreement, evidencing the obligations secured?

(b) set out in detail the circumstances giving rise to a right of enforcement?

3.2 Does a mortgage in respect of a vessel registered in your jurisdiction need to be notarised and/or legalised?

3.3 What are the registry fees in order to have a mortgage registered against a vessel registered in your jurisdiction?

3.4 Is registration indefinite or is there any requirement for re-registration after a certain period?

3.5 In your jurisdiction is a mortgage of a vessel required to be registered only in the ships register or, in addition, in another register? If so, please give brief details.

4 INFORMATION CONCERNING SECURITY INTERESTS IN SHIPS

4.1 Please advise if information concerning security interests in ships registered in your jurisdiction is publicly available, and if so, how it may be obtained, including the following issues, as applicable.

(a) Does a person seeking such information need the authorization of the vessel owner to get such information?

(b) Does your jurisdiction certify the accuracy of the information?

(c) How much time is generally required to obtain such information?

4.2 May a vessel subject to a security interest be sold by the owner prior to the release of the security interest, and if so, under what conditions or circumstances.

5 ARREST OF A CHARTERED VESSEL

5.1 Does your jurisdiction allow a mortgagee to arrest vessels on bareboat charter or time charter?

5.2 Under the laws of your jurisdiction, could the mortgagee incur any liability in tort, delict (or similar) to charterers or cargo interests if the mortgagee arrests the vessel when it is subject to charter and/or carrying cargo (on the grounds of interfering with the contractual relationship between owner and charterer or bill of lading holder)?

5.3 What are the procedures or requirements, if any, applied to the cargo on board a vessel that has become subject to judicial sale in your jurisdiction? Must the cargo be discharged before sale, and if so, who bears the costs and risks of such discharge?
PART II - THE WORK OF THE CMI

Letter of the President of the CMI enclosing a Questionnaire

6 PRIORITY ISSUES BETWEEN MORTGAGES REGISTERED IN THE SHIPS’ REGISTER IN YOUR JURISDICTION

6.1 Does your jurisdiction have a system of "priority notice" to enable priority to be reserved for a period before actual registration of the mortgage?

6.2 Once a mortgage is registered in your jurisdiction is it possible for a subsequent mortgage to be registered without the consent of the first registered mortgagee?

6.3 When there are two or more registered mortgages what determines their priority?

6.4 Is there any doctrine of notice such that the priority of a registered mortgage is deferred to that of an earlier but unregistered mortgage of which the registered mortgagee has notice?

6.5 Can a second registered mortgagee exercise enforcement remedies without the consent of the first registered mortgagee?

6.6 Does your jurisdiction have a system for registration of security or liens other than mortgages, whether consensual or non-consensual? If so, please describe.

7 GENERAL ENFORCEMENT ISSUES

7.1 Does your jurisdiction make a distinction between the enforcement of mortgages registered under the flag of your jurisdiction and the enforcement of any other foreign mortgages?

7.2 Is it necessary for the mortgagee to obtain a judgment in your jurisdiction on its claim under the loan agreement or other applicable debt instrument before it can enforce that mortgage?

7.3 If so, how long is it likely to take to obtain a judgment if the claim is contested? Will the local court expedite the proceedings having regard to the ongoing costs of maintaining the vessel?

7.4 Will the court in your jurisdiction accept jurisdiction for the mortgage claim under Article 7 1952 Arrest Convention, or equivalent domestic legislation in your jurisdiction?

8 JUDICIAL DECISIONS AND APPEALS

8.1 Do all courts in your jurisdiction have authority to sell vessels free of maritime liens and prior claims, or is such authority limited to special courts, such as admiralty courts?

8.2 What formalities, including evidence of claim, or evidence of notice, are required to affect the sale of a vessel free of liens and prior claims?

8.3 If the owner presents an appeal against judgment, will the court make an order for sale of the vessel before that appeal has been heard and decided?

9 SALE PROCEDURE

9.1 Can a mortgagee enforce his mortgage in your jurisdiction by applying for a judicial sale by auction?

9.2 What are the criteria for an application for a judicial sale by auction and what is the procedure and timetable for such an application and sale?
9.3 Will the court in your jurisdiction order a sale of the vessel pending judgment (pendent lite), recognizing that the vessel is a wasting asset?

9.4 Will the court in your jurisdiction fix a minimum bid price (reserve price) for the vessel and will the amount of that minimum bid price be disclosed to interested parties? What happens if the maximum amount bid for the vessel is lower than the reserve price?

9.5 Can the owner or other creditors influence the amount of the reserve price?

9.6 What arrangements will be made for public advertisement of the sale?

9.7 To what extent is it possible for the owner or other creditors to influence the timetable or procedure for sale?

9.8 Can a mortgagee enforce its mortgage in your jurisdiction by applying for a court approved private sale? If so, what are the criteria for an application requesting the court to approve a private sale and what is the procedure and timetable for such an application and sale?

9.9 Can a mortgagee bid its debt (animo compensandi) so as to allow a set off of the debt against the purchase price (and provide security for the claims of potential prior lien holders)? Or does a mortgagee (or its preferred bidder or buyer) have to pay the full price in cash?

10 SALE PROCEEDS

10.1 Will the sale proceeds be held in an interest bearing account?

(a) Will they be held in the currency of the sale or will they be converted into local currency?

(b) Will the proceeds of sale ultimately be subject to any exchange control or similar restrictions (and/or court fees) when they are paid out? If so, what is the procedure and likely timetable for obtaining permission to remove the funds?

11 PRIORITIES GENERALLY

11.1 Are priorities determined under local law (lex fori), or the law of the jurisdiction in which the claim arose (lex causae), or the law of the flag of the vessel?

11.2 If local law, where does the mortgagee rank amongst other maritime claims in the order of priority and which are those claims which rank prior to the mortgagee. Do the claims which rank ahead of a mortgage in your jurisdiction vary depending on whether the mortgage is:

(a) a mortgage of a vessel registered under the laws of your jurisdiction?

(b) a mortgage of a vessel registered under the laws of a different jurisdiction?

11.3 Are there any special rules on priority for local creditors?

11.4 Is it necessary for claimants to introduce their claims prior to the date of sale or within some specified period thereafter?

11.5 What is the timetable leading up to the distribution of the proceeds of sale?
11.6 Is the distribution order decided by the court?

11.7 Is that order subject to a right of appeal?

12 MORTGAGEE’S SELF-HELP REMEDIES

12.1 Under the laws of your jurisdiction does a vessel mortgage governed by and registered in accordance with such laws give the right to take the following enforcement steps without a court order in your jurisdiction?

(a) to take possession of the vessel;
(b) to appoint a receiver, manager or other party to operate the vessel;
(c) to sell the vessel as mortgagee;
(d) to sell the vessel as attorney in fact of the owner.

12.2 If, under the law of the ships’ register (where that is a different law from the law of your jurisdiction) a mortgagee is given the right to take the enforcement steps referred to at (a) – (d) of 11.1 without a court order would its right to do so be recognised or prohibited in each case in respect of a vessel physically located in your jurisdiction?

12.3 Where answers to the questions in 11.2 are negative would the answers be different in each case if a court order were obtained in the jurisdiction of the ships’ register?

13 INSOLVENCY PROCESSES*

13.1 Has your jurisdiction adopted the UNCITRAL Model Law on Cross-Border Insolvency?

13.2 Do the laws of your jurisdiction provide for recognition of foreign insolvency proceedings? (If the UNCITRAL Model Law has been adopted, in addition to its provisions)

13.3 Do the laws of your jurisdiction provide that the enforcement of rights of secured creditors (such as the mortgagee of a vessel) can be stayed or suspended during applicable insolvency proceedings?

13.4 Is the answer to 12.3 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

13.5 If the mortgage over a vessel located in your jurisdiction is being enforced through a maritime court sale in circumstances where the owner of the vessel is subject to insolvency proceedings in your jurisdiction, do the maritime court sale proceedings take precedence over the insolvency proceedings, or vice versa?

13.6 Is the answer to 12.5 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

13.7 If a vessel is sold in your jurisdiction through a maritime court sale is the mortgagee’s claim to the sale proceeds subject to the risk of the mortgage being challenged or

*If your jurisdiction is subject to the EU Insolvency Regulation and will be subject to the ‘Recast’ EU Insolvency Regulation, please so indicate – but also respond to the questions.
set-aside by applicable insolvency claw-back rules for transactions prior to insolvency?

13.8 Is the answer to 12.7 different if the insolvency proceedings did not originate in your jurisdiction but are foreign insolvency proceedings (being recognised in your jurisdiction by whatever means)?

13.9 Do the insolvency courts of your jurisdiction have, or claim, extraterritorial jurisdiction, such as over vessels located in a different jurisdiction? If so, how?

14 LEASING

14.1 In your jurisdiction is leasing of vessels common as a method of financing?

14.2 Do the laws of your jurisdiction give effect to a lease in accordance with the form of the document (formal approach) or is there a risk they will re-characterise certain leases as security interests (functional approach)?

14.3 If the laws of your jurisdiction adopt a functional approach (13.2) please describe briefly how this is applied; also, please say whether your courts would adopt a functional approach even where the governing law of the lease follows the formal approach.

14.4 Do the laws of your jurisdiction permit the parties to the lease of a vessel governed by that law to expand by contract the rights and remedies of the lessor on default by the lessee? Or are such rights and remedies provided for exclusively by law?

14.5 Do the rights and remedies of the lessor of a vessel include steps to terminate the leasing and re-take possession of the vessel through self-help or is this only possible in your jurisdiction with the assistance of the court?

14.6 Under the laws of your jurisdiction is a leased vessel considered to be an asset of the lessor or the lessee, or both?

14.7 Under the laws of your jurisdiction what impact would an insolvency process (or different processes) in respect of the lessee have on the rights and remedies of the lessor of a vessel? Is this affected by the type and terms of the lease?

14.8 Under the laws of your jurisdiction can a lessor arrest a vessel which it leases? Can it join in arrest proceedings initiated by a third party?

14.9 Under the laws of your jurisdiction what priority is given to the rights of a lessor of a leased vessel as against third parties with maritime liens/claims?

14.10 Do the laws of your jurisdiction recognise registered leases in respect of vessels registered in a different jurisdiction? If so, please give brief details.

14.11 In your jurisdiction is there generally a wish to promote leasing of vessels, including by reforming the law? If so please provide a brief explanation.

4 By 'leasing' is meant a demise chartering of a vessel where the holder of legal title ('lessor') is a financier rather than a commercial shipping company and the vessel is demise chartered to a shipping company ('lessee'). It might or might not involve the lessee having an option to purchase for a pre-agreed price or title automatically passing to the lessee at the end of the lease term. It covers both finance leases, where the lessee by one means or another has substantially the whole economic interest in the vessel and operating leases where the lessor retains some economic risk and interest in the vessel.
15 \hspace{1em} RESERVATION OF TITLES

15.1 Do the laws of your jurisdiction treat the holder of title under reservation of title as the holder of a security interest?

15.2 Do the laws of your jurisdiction provide for reservation of title arrangements to be registered in the ships' register in any way different from a standard registration of the holder of title as registered owner? If so, please give brief details.

15.3 If the laws of your jurisdiction do provide for reservation of title arrangements to be registered as referred to in 14.2, what rights and remedies are given to the holder of title?

15.4 Do the laws of your jurisdiction recognise foreign reservation of title arrangements of a type referred to in 14.2? If so, please give brief details of how these arrangements would be recognised.

April 2016

\footnotesize{\textsuperscript{5} References to 'reservation of title' are intended to include arrangements where a seller retains title to the vessel until the buyer pays the full price in circumstances where the buyer's obligation to pay the full price is deferred over time.}
The IWG on Ship Financing Security Practices was formally approved and constituted during the Executive Council meeting of the CMI in June last year in Istanbul.

This came about as a result of the fact that Unidroit confirmed to our President Mr. Stuart Hetherington in late 2014 that informal consultations required to gather information on the actual financing practices of the maritime industry were being undertaken by Unidroit and were to be considered on going. The background to all of this was that when the Convention on International Interests in Mobile Equipment popularly referred to as the Cape Town Convention, came to be in 2001, a decision had been taken earlier that it should not include a protocol which would cover maritime assets. It was not considered necessary at the time by the maritime industry in general given that the shipping industry and financial interests in the shipping sector were always well regulated and protected. Furthermore The Maritime Liens and Mortgages Convention had just been adopted in 1993.

With Unidroit’s renewed interest in the subject matter it was considered as the prudent thing to do for CMI to set up an International Working Group to assist with what is essentially a fact finding mission, a mission which seeks to establish what are the ship financing security practices in the states represented at CMI with a view to forming an opinion as to whether anything has changed since the Cape Town Convention in 2001.

The International Working Group is made up of David Osborne, partner at Watson Farley and Williams who is the rapporteur of the group, Andrew Tetley Partner at Reed Smith in Paris, Armstrong Chen Partner at King and Wood Mallesons in Beijing, Prof. Souichirou Kozuka, Professor of Law at Gakushuin University in Tokyo, Camilla Mendes Vianna Cardoso Partner at Kinkaid, Mendes, Vianna Advogados, Allen Black, Partner of Winston and Strawn in the United States, Stefan Rindfleisch Partner at Ehlerman, Rindfleisch and Gadow and myself.
Since the meeting in June, we have worked to put together a questionnaire, a very extensive questionnaire because the issue of whether financiers operating in the realm of ship finance are content with security arrangements provided by various jurisdictions, is extensive and cuts right across issues ranging from the success or otherwise of other international conventions, the registration of mortgages and other security issues in various jurisdictions, information available from ships’ registers on security interests, the rights of the mortgagees of arrest and enforcement in default situations, the ease or otherwise with which a mortgagee can sell a vessel privately, through a judicial sale or a court approved private sale, issues of priority between creditors, how such rights interact with general insolvency processes, finance leasing, reservation of title and a host of other matters. All of these are considered in the extensive questionnaire which has been prepared and which was circulated ahead of the May conference in New York.

New York promises to be an interesting opportunity for this IWG to team up with the Marine Financing Committee of the MLAUS. There has been great team work between the two groups with a view to preparing a session where persons attending the New York Conference who are interested in the subject matter may participate in a session during which various angles of the subject matter will be covered. I would like to thank Marjorie Krumholz, Managing Partner of the DC office of Thompson Coburn and Chair of the Marine Financing Committee of the MLAUS for her support and enthusiasm. It is also hoped that there could be a discussion on the questionnaire that has already been circulated.

The next stage beyond the New York Conference would be waiting for the replies from the various MLA’s to our questionnaire. I have no doubt that we will have numerous interesting responses which will give us plenty of food for thought.
RESTATEMENT OF THE LEX MARITIMA

A report on the scope and activities of the IWG,
by Eric Van Hooydonk

Page 432
A REPORT ON THE SCOPE AND ACTIVITIES OF THE IWG

ERIC VAN HOYDONK

1. Background

Maritime law is supported by a long tradition of international uniformity. In recent years, however, the development of a universal maritime legal order by the adoption of unifying conventions has slowed. At the same time, general, non-maritime contract law has started to find a way to wider harmonisation.

The existence of a ‘Lex Maritima’ consisting of a complex of internationally accepted rules of maritime law that may be traced in particular back to usage and general principles is widely, and even increasingly, subscribed to by legal doctrine. Moreover, this view finds support in numerous elements of positive law, including case law and recently adopted national codifications of maritime law.

On the other hand, there is no instrument of practical use available in which this virtually mythical ‘Lex Maritima’ with all its customs, usages and principles is clearly articulated. Preparing and promoting such a compilation is quintessentially a task for the Comité Maritime International in the exercise of its research and education role, and with the broad aim of the promotion of harmonisation of maritime laws.

2. Scope

The CMI IWG on the Lex Maritima should work towards the preparation of an elementary – that is, concise and flexible – description of the typical concepts and rules of maritime law that may be regarded as being internationally accepted and common to most, if not all, legal systems and traditions.

In other words, it is an exposion of the foundations of positive maritime law, such as those encountered in the conventions, national laws and the more specific and thematic self-regulating sources. This will be a search for the innermost core of maritime law, as it is expressed in the concrete, practical legal rules in daily use in the maritime and legal community.

Perhaps the main difference between the proposed restatement of principles and previous unification efforts is that the former will have to explore and focus on common ground, rather than tackle issues of disagreement and divergence that require resolution. Such a compilation of selected general principles of maritime law could promote the satisfactory
functioning of maritime law.

A CMI instrument setting out selected principles of the contemporary Lex Maritima may certainly not be allowed to have any intent of replacing existing unifying conventions, national maritime law and instruments of self-regulation, such as standard contracts. Nor may it be allowed to become a repetition or duplicate of international or European treaties or principles relating to general contract law. Even less is it to be a concise summary of existing maritime law, as it is supposed to be an attempt to sound out the shared, underlying and fundamental concepts of maritime law. For the same reason, the project will not result in a comprehensive, detailed systematisation of international maritime law in all its aspects. Finally, it is difficult to speak of general principles regarding matters that are the subject of international controversy.

3. Methodology

The exact rules that should specifically be included in a compilation of selected general principles of maritime law thus merit closer investigation and close consultations between experts and practitioners. It would therefore be premature to start summarising what the content of these rules might be. Even so, merely by way of contribution to an initial working hypothesis, the following non-exhaustive list of themes might be mentioned:

– the relationship of the principles to other law
– the recognition of self-regulation, including port custom, as source of the law
– the internationalising interpretation of conventions, legislation and contracts
– freedom of navigation
– freedom of maritime contract (subject to express mandatory rules)
– the fundamental distinguishing characteristics of the ship (in contrast among other things to a wreck)
– the application of the law of the flag to the property law status of the ship
– the function of the ship as an asset and centre of liabilities
– negligence as a maritime liability principle
– the perils of the sea and solidarity between interested parties as a rule of interpretation
– the general duty of care of contracting parties in maritime law (‘due diligence’)
– the essential characteristics of the various forms of chartering
– the essential characteristics of the bill of lading and the sea waybill
– the authority, powers and responsibility of the master of the ship
– the humanitarian treatment of crew and stowaways
– the advisory role of the pilot.
4. **Membership**

Eric Van Hooydonk (Belgium), Chairman
Jesus Casas Robla (Spain), Rapporteur
John Hare (South Africa)
Alexander von Ziegler (Switzerland)
Aybek Ahmedov (Russia)
Frank Smeele (The Netherlands)
Andreas Maurer (Germany)
Massimiliano Rimaboschi (Italy)
Mišo Mudri (Croatia)
Filippo Lorenzon (United Kingdom)
Michael Sturley (United States)
Tomotaka Fujita (Japan)
Gustavo Omaña Pares (Venezuela)
ROTTERDAM RULES

A report on the activities of the IWG,
by Tomotaka Fujita

Page 436
A REPORT ON THE ACTIVITIES OF THE IWG

TOMOTAKA FUJITA

Introduction
On December 11, 2008, during its 63rd session, the UN General Assembly adopted the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules). Taking into account the practical and historical importance of the new regime for the international carriage of goods, the Executive Council decided to establish the International Working Group (IWG) on the Rotterdam Rules for this purpose. The purpose of the IWG is to monitor the adoption and implementation of the Rotterdam Rules. The current members of the IWG are Tomotaka Fujita (Chairman), Stuart Beare, Philippe Delebecque, Vincent M. DeOrchis, José Tomas Guzman, Hannu Honka, Kofi Mbiah, Michael Sturley, José Vincente Guzman, Gertjan Van der Ziel, and Miriam Goldby.

1. Current Status of the Rotterdam Rules

2. New York Conference
IWG, in cooperation with MLAUS Carriage of Goods by Sea Committee, organizes Session 3, a two-hour session devoted to the legal issues relating to carriage of goods by sea. Although this is not exactly an activity of the IWG, I will report the information since I act as a liaison between CMI and MLAUS on this issue.
The session focuses on a classic problem of jurisdiction and arbitration clauses in a transport document. It examines whether and to what extent jurisdiction and arbitration clauses are enforceable in each jurisdiction and how the situation might be affected when the Rotterdam Rules enter into force including whether each state is likely to opt-in the chapters on jurisdiction and arbitration.

Each of the speakers will provide a short history of how their country has viewed jurisdiction and arbitration clauses, how currently the legislator and the courts in that country are viewing jurisdiction and arbitration clause and they will handle these clauses in the future. The speakers are chosen taking into account of geographic diversity and different legal tradition (common law/ civil law). After each speaker has had the opportunity to present, Michael Sturley will moderate a discussion among the speakers with respect to the issues that may be raised in their speech.

The full program of the session is as follows.

A comparative analysis of how courts in different countries deal with Jurisdiction and Arbitration Clauses in Bills of Lading and Other Sea Carriage Documents

Chairs: Susan M Dorgan and Tomotaka Fujita

National and Regional Reports
Ricardo Rozas - Chile
V.J. Matthew - India
Maria Dragun Gertner - Poland and EU
Sarah Derrington - Australia
Tomotaka Fujita - Japan
Susan M Dorgan - U.S.
Chester Hooper - Rotterdam Rules

Panel Discussion with Hypothetical Case
Moderator: Michael Sturley
Panelists: Ricardo Rozas, V.J. Matthew, Susan M Dorgan, Chester Hooper, Maria Dragun Gertner, Sarah Derrington and Tomotaka Fujita

3. UNCITRAL Working Group IV
UNCITRAL Working Group IV commenced a study on “electronic transferable records” in October 2011 and is now finalizing a possible draft provisions on electronic transferable records in the form of a model law. It is very important to make sure that such provisions do not create any inconsistency with e-commerce provisions contained in the Rotterdam Rules. At this stage, IWG does not see any serious problem in the current draft. However, IWG will keep its eyes on the discussion in WG IV.

4. Update of IWG’s Q&A and UNCITRAL “Accession Kit”
IWG on the Rotterdam Rules published its “Q&A on the RRs” in
2009, which has been revised several times. The purpose of the Q&As is to provide answers to frequently asked questions and to avoid possible misunderstandings. The “Q&As” is sometimes cited and incorporated as a material in casebooks. IWG of the Rotterdam Rules has updated the Q&As in July 2015 although it is not officially published for the reasons explained below.

Recently UNCITRAL Secretariat is drafting an “Accession Kit of the Rotterdam Rules” to assist the Rules’ domestic implementation in developing countries. Many members of the IWG was invited to the expert meeting for the purpose. The meeting elaborated the “Accession Kit” would include CMI IWG’s Q&As on the Rotterdam Rules.

Once the Accession Kit including the CMI IWG’s Q&As on the Rotterdam Rules is finalized, it will be published in 6 UN official languages.
PART III *

Status of ratifications to
Maritime Conventions

Etat des ratifications
aux conventions de Droit Maritime

* Although Comité Maritime International has made all efforts to produce accurate and correct informations as at the date of 30 June 2015 regarding the status of ratifications of Maritime Conventions, readers should address to the Official Depositaries of the Conventions to verify all information contained there.
**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 Étrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, depositary 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.
### Abordage 1910

**Convention internationale pour l'unification de certaines règles en matière d'Abordage et protocole de signature**

Bruxelles, le 23 septembre 1910  
Entrée en vigueur: 1er mars 1913

**International convention for the unification of certain rules of law relating to Collision between vessels and protocol of signature**

Brussels, 23rd September, 1910  
Entered into force: 1 March 1913

*(Translation)*

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<sup>(1)</sup> With letter dated 4 June 1997 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People’s Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People’s Republic of China.

<sup>(2)</sup> With letter dated 15 October 1999 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People’s Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People’s Republic of China.
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(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.
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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

(Translation)

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(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 and salvage 1910

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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

(3) Including Jersey, Guernsey and Isle of Man.
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

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PART III - STATUS OF RATIFICATIONS TO BRUSSELS CONVENTIONS

Règles de La Haye

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

(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

(denunciation - 16.VII.1993)
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

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<td>(denunciation 20.X.1983)</td>
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<td>(a)</td>
<td>2.XII.1930</td>
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<td>17.VII.1967</td>
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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 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 le Danemark:
1) La Loi sur la navigation danoise en date du 7 mai 1937 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 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 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."

Egypt
...Nous avons résolu d’adhérer par les présentes à la dite Convention, et promettions de concourir à son application. L’Égypte est, toutefois, d’avis que la Convention, dans sa totalité, ne s’applique pas au cabotage national. En conséquence, l’Égypte 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 connaissement, le soussigné, Plénipotentiaire du Japon, fait les réserves suivantes:
a) À 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 États non-signataires par l’article 12 de la Convention internationale pour l’unification de certaines règles en matière de connaissement, 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 promettions 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 connaissement 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 connaissement.

Norway
...L’adhésion de la Norvège à la Convention internationale pour l’unification de certaines
règles en matière de connaissement, 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 connaissements 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 hereinafore recited and made part of this ratification.

Protocole portant modification de
la Convention Internationale pour
l'unification de certaines
règles en matière de
connaissement, signée a Bruxelles
le 25 août 1924

Règles de Visby

Bruxelles, 23 février 1968
Entrée en vigueur: 23 juin 1977

Belgium (r) 6.IX.1978
China (r) 1.XI.1980
Hong Kong(1) (a) 28.X.1998
Croatia (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.
### 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 connaissement 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”.

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PART III - STATUS OF RATIFICATIONS TO BRUSSELS CONVENTIONS

Protocole DTS

Protocole portant modification de la Convention Internationale pour l’unification de certaines règles en matière de connaissement 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

Australia (a) 16.VII.1993
Belgium (r) 7.IX.1983
China
   Hong Kong(1) (a) 20.X.1983
   Croatia (a) 28.X.1998
   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
   Latvia (a) 4.IV.2002
   Lithuania (a) 2.XII.2003
   Luxembourg (a) 18.II.1991
   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
   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

SDR Protocol

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

(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.
Privilèges et hypothèques 1926

Maritime liens and mortgages 1926

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 États-Unis d’Amérique sur le marché des changes de Zurich. La contrevaleur 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)
  (denunciation – 1.III.1965)
Estonia (r) 2.VI.1930
Finland (a)
  (denunciation – 1.III.1965)
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
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<td>17.VII.1967</td>
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</table>

**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.

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**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)*

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Immunité 1926

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
Cyprão, Dutch Indies
Norway (r) 25.IV.1939
Poland (r) 16.VII.1976
Portugal (r) 27.VI.1938
Romania (r) 4.VII.1937

(denunciation – 21.IX.1959)
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.
<table>
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<tr>
<th>Country</th>
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<td>France</td>
<td>25.V.1957</td>
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</table>

*(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.
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<td>17.X.1969</td>
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<td>Zaire</td>
<td>17.VII.1967</td>
</tr>
</tbody>
</table>
Compétence pénale 1952

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’État 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’État 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* 12.V.1965
Antigua and Barbuda* 12.V.1965
Argentina* 19.IV.1961
Bahamas* 12.V.1965
Belgium* 10.IV.1961
Compétence pénale 1952

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
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   Macao(2) (a) 23.III.1999
Comoros (a) 23.IV.1958
Congo (a) 23.IV.1958
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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

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(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

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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° 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 1er et 2er de la présente Convention.

Croatia

Reservation made by Yugoslavia and now applicable to Croatia: “Sous réserve de ratifications ultérieure et acceptant la réserve prévue à l’article 4 de cette Convention. Conformément à l’article 4 de ladite Convention, le Gouvernement yougoslave se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales”.

Dominica, Republic of

... Subject to the following reservations;
(a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Dominica;
(b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Dominica.

Egypt

Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler la réserve prévue à l’article 4, alinéa 2. Confirmation expresse de la réserve faite au moment de la signature.

Fiji

The Government of Fiji reserves the right not to observe the provisions of article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respect that ship or any class of ship to which that ship belongs consented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Fiji. The Government of Fiji reserves the right under article 4 of this Convention to take proceedings in respect of offences committed within the territorial water of Fiji.

France

Au nom du Gouvernement de la République Française je déclare formuler la réserve prévue à l’article 4, paragraphe 2, de la convention internationale pour l’unification de certaines règles relatives à la compétence pénale en matière d’abordage.

Germany, Federal Republic of

(Traduction) Sous réserve du prescrit de l’article 4, alinéa 2.

Grenada

Same reservations as the Republic of Dominica
Guyana
Same reservations as the Republic of Dominica

Italy
Le Gouvernement de la République d’Italie se réfère à l’article 4, paragraphe 2, et se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Khmere Republic
Le Gouvernement de la République Khmère, d’accord avec l’article 4 de ladite convention, se réservera le droit de poursuivre les infractions commises dans ses eaux territoriales.

Kiribati
Same reservations as the Republic of Dominica

Mauritius
Same reservations as the Republic of Dominica

Montserrat
See Antigua.

Netherlands
Conformément à l’article 4 de cette Convention, le Gouvernement du Royaume des Pays-Bas, se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Nigeria
The Government of the Federal Republic of Nigeria reserve the right not to implement the provisions of Article 1 of the Convention in any case where that Government has an agreement with any other State that is applicable to a particular collision or other incident of navigation and if such agreement is inconsistent with the provisions of the said Article 1. The Government of the Federal Republic of Nigeria reserves the right, in accordance with Article 4 of the Convention, to take proceedings in respect of offences committed within the territorial waters of the Federal Republic of Nigeria.

North Borneo
Same reservations as the Republic of Dominica

Portugal
Au nom du Gouvernement portugais, je déclare formuler la réserve prévue à l’article 4, paragraphe 2, de cette Convention.

Sarawak
Same reservations as the Republic of Dominica

St. Helena
See Antigua.

St. Kitts-Nevis
See Antigua.

St. Lucia
Same reservations as the Republic of Dominica
St. Vincent
See Antigua.

Seychelles
Same reservations as the Republic of Dominica

Solomon Isles
Same reservations as the Republic of Dominica

Spain
La Délégation espagnole désire, d’accord avec l’article 4 de la Convention sur la compétence pénale en matière d’abordage, se réserver le droit au nom de son Gouvernement, de poursuivre les infractions commises dans ses eaux territoriales. Confirmation expresse de la réserve faite au moment de la signature.

Tonga
Same reservations as the Republic of Dominica

Tuvalu
Same reservations as the Republic of Dominica

United Kingdom
1. - Her Majesty’s Government in the United Kingdom reserves the right not to apply the provisions of Article 1 of this Convention in any case where there exists between Her Majesty’s Government and the Government of any other State an agreement which is applicable to a particular collision or other incident of navigation and is inconsistent with that Article.
2. - Her Majesty’s Government in the United Kingdom reserves the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

...subject to the following reservations:

(1) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs consented to the institution of criminal and disciplinary proceedings before the judicial or administrative authorities of the United Kingdom.
(2) In accordance with the provisions of Article 4 of the said Convention, the Government of the United Kingdom of Great Britain and Northern Ireland reserve the right to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.
(3) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservation provided for in Article 4 of the said Convention...

Vietnam
Comme il est prévu à l’article 4 de la même convention, le Gouvernement vietnamien se réserve le droit de poursuivre les infractions commises dans la limite de ses eaux territoriales.
## Convention internationale pour l'unification de certaines règles sur la Saisie conservatoire des navires de mer

Bruxelles, 10 mai 1952  
Entrée en vigueur: 24 février 1956

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<td>Archipel des Tuamotu et des Gambier,</td>
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(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.
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<td>Spain</td>
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* (denunciation – 28.III.2011)
Togo (a) 23.IV.1958
Tonga* (a) 13.VI.1978
Turks Isles and Caicos* (a) 21.IX.1965
Tuvalu* (a) 21.IX.1965
Ukraine (a) 16.XI.2011
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
  Isle of Man (a) 14.IV.1993
  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 reconnaît pas le caractère obligatoire des alinéas a), b), c), d), e) et f) du paragraphe 1er de l’article 7, étant donné que conformément aux lois de la République les seuls tribunaux compétents quant au fond pour connaître des actions relatives aux créances maritimes, sont ceux du domicile du demandeur, sauf s’il s’agit des cas visés sub o), p) et q) à l’alinéa 1er de l’article 1, ou ceux de l’Etat dont le navire bat pavillon.
Le Gouvernement de Costa Rica, en ratifiant ladite Convention, se réserve le droit d’appliquer la législation en matière de commerce et de travail relative à la saisie des navires étrangers qui arrivent dans ses ports.

Côte d’Ivoire
Confirmation d’adhésion de la Côte d’Ivoire. Au nom du Gouvernement de la République de Côte d’Ivoire, nous, Ministre des Affaires Etrangères, confirmons que par Succession d’Etat, la République de Côte d’Ivoire est venue, 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”.

Saisie des navires 1952  Arrest of ships 1952
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’État ou au service d’un État, ainsi qu’une déclaration relative à l’article 18 de la Convention.

Dominica, Republic of

Same reservation as Antigua

Egypt

Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler les réserves prévues à l’article 10.

Confirmation expresse des réserves faites au moment de la signature.

Germany, Federal Republic of

*Traduction* ...sous réserve du prescrit de l’article 10, alinéas a et b.

Grenada

Same reservation as Antigua.

Guyana

Same reservation as the Bahamas.

Ireland

Ireland reserves the right not to apply the provisions of the Convention to warships or to ships owned by or in service of a State.

Italy

Le Gouvernement de la République d’Italie se réfère à l’article 10, par. (a) et (b), et se réserve:

(a) le droit de ne pas appliquer les dispositions de la présente Convention à la saisie d’un navire pratiquée en raison d’une des créances maritimes visées aux alinéas 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.

Tuvalu
Same reservation as the Bahamas.

United Kingdom of Great Britain and Northern Ireland
Subject to the following reservations:
1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

United Kingdom (Overseas Territories): Anguilla, Bermuda, British Virgin Islands, Caiman Islands, Falkland Islands and Dependencies, Gibraltar, Guernsey, Hong Kong, Montserrat, St. Helena, Turks Isles and Caicos
Subject to the following reservations:
1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.
Convention internationale sur la Limitation de la responsabilité des propriétaires de navires de mer et protocole de signature
Bruxelles, le 10 octobre 1957
Entrée en vigueur: 31 mai 1968

International convention relating to the Limitation of the liability of owners of sea-going ships and protocol of signature
Brussels, 10th October 1957
Entered into force: 31 May 1968

Algeria  (a)  18.VIII.1964
Australia  (r)  30.VII.1975
(Bdenunciation – 30.V.1990)
Bahamas*  (a)  21.VIII.1964
Barbados*  (a)  4.VIII.1965
Belgium  (r)  31.VII.1975
(Bdenunciation – 1.IX.1989)
Belize  (r)  31.VII.1975
China  Macao(1)  (a)  20.XII.1999
Denmark*  (r)  1.III.1965
(Bdenunciation – 1.IV.1984)
Dominica, Republic of*  (a)  4.VIII.1965
Egypt (Arab Republic of)  (denunciation – 8.V.1985)
Fiji*  (a)  21.VIII.1964
Finland  (r)  19.VIII.1964
(Bdenunciation – 1.IV.1984)
France  (r)  7.VII.1959
(Bdenunciation – 15.VII.1987)
Germany  (r)  6.X.1972
(Bdenunciation – 1.IX.1986)
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

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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.
Limitation de responsabilité 1957

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.
PART III - STATUS OF RATIFICATIONS TO BRUSSELS CONVENTIONS

Limitation de responsabilité 1957

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 tonnes de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Papua New Guinea
(a) The Government of Papua New Guinea excludes paragraph (1)(c) of Article 1.
(b) The Government of Papua New Guinea will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
(c) The Government of Papua New Guinea shall give effect to the said Convention by including the provisions of the said Convention in the National Legislation of Papua New Guinea.

Portugal
(Traduction) ...avec les réserves prévues aux alinéas a), b) et c) du paragraphe deux du Protocole de signature...

St. Lucia
Same reservation as Bahamas

Seychelles
Same reservation as Bahamas

Singapore
Le 13 septembre 1977 à été reçue une note verbale datée du 6 septembre 1977, émanant du Ministère des Affaires étrangères de Singapour, par laquelle le Gouvernement de Singapour confirme qu’il se considère lié par la Convention depuis le 31 mai 1968, avec les réserves suivantes:
...Subject to the following reservations:
a) the right to exclude the application of Article 1, paragraph (1)(c); and
b) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons. The Government of the Republic of Singapore declares under sub-paragraph (c) of paragraph (2) of the Protocol of signature that provisions of law have been introduced in the Republic of Singapore to give effect to the Convention, although the Convention as such has not been made part of Singapore law.

Solomon Islands
Same reservation as Bahamas

Spain
Le Gouvernement espagnol se réserve le droit:
1) d’exclure du champ d’application de la Convention les obligations et les responsabilités prévues par l’article 1, paragraphe (1)(c);
2) de régler par les dispositions particulières de sa loi nationale le système de limitation de responsabilité applicable aux propriétaires de navires de moins de 300 tonnes de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.
**Tonga**

Reservations:
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga exclude paragraph (1)(c) of Article 1 from their application of the said Convention.

2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga will regulate by specific provisions of national law the system of liability to be applied to ships of less than 300 tons.

**Tuvalu**

Same reservation as Bahamas

**United Kingdom of Great Britain and Northern Ireland**

Subject to the following observations:

1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said 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.

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**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

**Protocol to amend the international convention relating to the Limitation of the liability of owners of sea-going ships of 10 October 1957**

Brussels, 21st December 1979

Entered into force: 6 October 1984

**Australia**

30.XI.1983

**Belgium**

7.IX.1983

**Luxembourg**

18.II.1991
### Part III - Status of Ratifications to Brussels Conventions

#### Stowaways 1957

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#### Conception internationale pour l’unification de certaines règles en matière de Transport de passagers par mer et protocole

<table>
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<th>Country</th>
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#### International convention for the unification of certain rules relating to Carriage of passengers by sea and protocol

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<td>Spain</td>
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<td>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)</td>
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#### International convention relating to Stowaways

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</tbody>
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*Note: (a) indicates accession, (r) indicates ratification.*
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:

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.

Conventions internationales
relative à la responsabilité
des exploitants de
Navires nucléaires
et protocole additionnel
Bruxelles, 25 mai 1962
Pas encore en vigueur

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

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

Algeria (a) 2.VII.1973
Cuba* (a) 15.II.1972

Reservations

Cuba
(Traduction) Le Gouvernement révolutionnaire de la République de Cuba, Partie Contractante, formule les réserves formelles suivantes:
1) de ne pas appliquer cette Convention lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.
3) en donnant effet à cette Convention, la Partie Contractante pourra, en ce qui concerne les contrats de transport établis à l’intérieur de ses frontières territoriales pour un voyage dont le port d’embarquement se trouve dans lesdites limites territoriales, prévoir dans sa législation nationale la forme et les dimensions des avis contenant les dispositions de cette Convention et devant figurer dans le contrat de transport. De même, le Gouvernement révolutionnaire de la République de Cuba déclare, selon le prescrit de l’article 18 de cette Convention, que la République de Cuba ne se considère pas liée par l’article 17 de ladite Convention.

Convention internationale relative à l’inscription des droits relatifs aux Navires en construction

Bruxelles, 27 mai 1967
Pas encore en vigueur

Croatia (r) 3.V.1971
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Sweden (r) 13.XI.1975
Syrian Arab Republic (a) 1.VIII.1974
**Convention internationale pour l’unification de certaines règles relatives aux Privilèges et hypothèques maritimes**

**Bruxelles, 27 mai 1967**

**Pas encore en vigueur**

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**Reservations**

**Danemark**

L’instrument de ratification du Danemark est accompagné d’une déclaration dans laquelle il est précisé qu’en ce qui concerne les Îles Féroé les mesures d’application n’ont pas encore été fixées.

**Maroc**


**Norvège**

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.

**Suède**

Conformément à l’article 14 la Suède fait les réserves suivantes:
1) de mettre la présente Convention en vigueur en incluant les dispositions de la Convention dans la législation nationale suivant une forme appropriée à cette législation;
2) de faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.
Status of the Ratifications of
And Accessions to the IMO Conventions
In the Field of Private Maritime Law

Editor’s Notes
1. This Status is based on advices from the International Maritime Organisation and reflects the situation as at 30 June, 2006.
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
2. Les dates mentionnées sont les dates du dépôt des instruments.
3. L’astérisque qui suit le nom d’un Etat indique que cet Etat a fait une déclaration, une réserve 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.
International Convention on Civil liability for oil pollution damage

(CLIC 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

(CLIC 1969)

Signée a Bruxelles, le 29 novembre 1969
Entrée en vigueur: 19 juin 1975

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**CLC 1969**

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1. With a declaration, reservation or statement.
2. Applied to the Hong Kong Special Administrative Region with effect from 1.VII.1997.
5. 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.
6. As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.
7. As from 4 February 2003, the name of the State of the Federal Republic of Yugoslavia was changed to Serbia and Montenegro. The date of succession by Serbia and Montenegro to the Convention is the date on which the Federal Republic of Yugoslavia assumed responsibility for its international relations.
8. Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Convention with effect from the same date, i.e. 3 June 2006.
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.”

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

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(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 jurisdiction of the Peruvian State. In this respect the Federal Government points again to the fact that according to international law no coastal State can claim unrestricted sovereignty and jurisdiction beyond its territorial sea, and that the maximum breadth of the territorial sea according to international law is 12 nautical miles.”

The depositary received the following communication dated 4 November 1987 from the Permanent Mission of the Union of Soviet Socialist Republics to the International Maritime Organization (in the Russian language):

[Translation]

“...the Soviet Side has the honour to confirm its position in accordance with which a coastal State has no right to claim an extension of its sovereignty to sea areas beyond the outer limit of its territorial waters the maximum breadth of which in accordance with international law cannot exceed 12 nautical miles.”
provisions of article XI, paragraph 2 of the Convention, as they contradict the principle of the judicial immunity of a foreign State.”(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.
Protocol to the International Convention on Civil liability for oil pollution damage

(CLIC 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
(CLIC PROT 1976)
Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 8 avril 1981

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<td>4.VI.1979</td>
<td>8.IV.1981</td>
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</tbody>
</table>

Number of Contracting States: 53

1 With a notification under article V(9)(c) of the Convention, as amended by the Protocol.
2 Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997. Ceased to apply to the Hong Kong Special Administrative Region with effect from 22.VIII.2003.
3 With a declaration.
4 As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.
States which have denounced the Protocol

<table>
<thead>
<tr>
<th>Country</th>
<th>Date of receipt of denunciation</th>
<th>Effective date of denunciation</th>
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<td>Australia</td>
<td>22.VI.1988</td>
<td>[date of entry into force of 1984 CLC Protocol]</td>
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<td>Qatar</td>
<td>28.XI.2001</td>
<td>28.XI.2002</td>
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</tbody>
</table>

Declarations, Reservations and Statements

Federal Republic of Germany
The instrument of ratification of the Federal Republic of Germany contains the following declaration (in the English language):
“...with effect from the date on which the Protocol enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)”.

Saudi Arabia
The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):
[Translation]
“However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol”.

Notifications

Article V(9)(c) of the Convention, as amended by the Protocol

China
“...the value of the national currency, in terms of SDR, of the People’s Republic of China is calculated in accordance with the method of valuation applied by the International Monetary Fund.”

Poland
“Poland will now calculate financial liabilities in cases of limitation of the liability of owners of sea-going ships and liability under the International Oil Pollution Compensation Fund in terms of the Special Drawing Right, as defined by the International Monetary Fund.”
However, those SDR’s will be converted according to the method instigated by Poland, which is derived from the fact that Poland is not a member of the International Monetary Fund. The method of conversion is that the Polish National Bank will fix a rate of exchange of the SDR to the Polish zloty through the conversion of the SDR to the United States dollar, according to the current rates of exchange quoted by Reuter. The US dollars will then be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies. The above method of calculation is in accordance with the provisions of article II paragraph 9 item “a” (in fine) of the Protocol to the International Convention on Civil Liability for Oil Pollution Damage and article II of the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.”

Switzerland

[Translation]
“The Swiss Federal Council declares, with reference to article V, paragraph 9(a) and (c) of the Convention, introduced by article II of the Protocol of 19 November 1976, that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:
The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette.

USSR

“In accordance with article V, paragraph 9 “c” of the International Convention on Civil Liability for Oil Pollution Damage, 1969 in the wording of article II of the Protocol of 1976 to this Convention it is declared that the value of the unit of “The Special Drawing Right” expressed in Soviet roubles is calculated on the basis of the US dollar rate in effect at the date of the calculation in relation to the unit of “The Special Drawing Right”, determined by the International Monetary Fund, and the US dollar rate in effect at the same date in relation to the Soviet rouble, determined by the State Bank of the USSR”.

United Kingdom

“...in accordance with article V(9)(c) of the Convention, as amended by article II(2) of the Protocol, the manner of calculation employed by the United Kingdom pursuant to article V(9)(a) of the Convention, as amended, shall be the method of valuation applied by the International Monetary Fund.
Protocol of 1992 to amend the
International Convention on
Civil liability for oil
pollution damage, 1969

(CLCPRT 1992)

Done at London,
27 November 1992
Entry into force: 30 May 1996

Date of deposit
of instrument        Date of entry
into force

Albania (accession)  30.VI.2005  30.VI.2006
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
Azerbaijan (accession) 16.VII.2004  16.VII.2005
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.XL1998  27.XL1999
Benin (accession)      5.II.2010  5.II.2011
Bulgaria (accession)   28.XI.2003  28.XI.2004
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), 4   5.I.1999   5.I.2000
Colombia (accession)   19.XI.2001  19.XI.2002
Congo (accession)      7.VIII.2002  7.VIII.2003
Côte d’Ivoire (accession) 8.VII.2013  8.VII.2014
Denmark (ratification) 30.V.1995  30.V.1996
Dominica (accession)   31.VIII.2001 31.VIII.2002
Dominican Republic (accession)  24.VI.1999  24.VI.2000

Protocole à la Convention
Internationale sur la
Responsabilité civile pour
les dommages dus à la
pollution par les
hydrocarbures, 1969

(CLCPRT 1992)

Signé à Londres,
le 27 novembre 1992
Entrée en vigueur: 30 May 1996
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<td>20.IX.2007</td>
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</tbody>
</table>
Number of Contracting States: 133

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

4. Applies to the Macau Special Administrative Region with effect from 24 June 2005.
5. Applies to the Netherlands Antilles with effect from 21 December 2005.
6. Applies to Aruba with effect from 12 April 2006.

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

Declarations, Reservations and Statements

Germany

The instrument of ratification of Germany was accompanied by the following declaration:

New Zealand

The instrument of accession of New Zealand contained the following declaration:
“And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zealand with the Depositary.”
International Convention relating to Intervention on the high seas in cases of oil pollution casualties, 1969

(Intervention 1969)

Done at Brussels, 29 November 1969
Entry into force: 6 May 1975

Convention Internationale sur L'intervention en haute mer en cas d'accident entraînant ou pouvant entraîner une pollution par les hydrocarbures, 1969

(Intervention 1969)

Done at Brussels, 29 November 1969
Entry into force: 6 Mai 1975

<table>
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Date of signature or deposit of instrument  Date of entry into force or succession

Trinidad and Tobago (accession)  6.III.2000  4.VI.2000
Tunisia (accession)  4.V.1976  2.VIII.1976
Ukraine (succession)  —  17.XII.1993
United Arab Emirates (accession)  15.XII.1983  14.III.1984
United Kingdom (ratification)  12.I.1971  6.VI.1975
United States (ratification)  21.II.1974  6.VI.1975
Yemen (accession)  6.III.1979  4.VI.1979

Number of Contracting States: 88

1 With a declaration, reservation or statement
2 On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded1 to the Convention on 21 December 1978.
3 As from 26 December 1991, the membership of the USSR in the Convention is continued by the Russian Federation.
4 Applies to the Hong Kong Special Administrative Region with effect from 1 July 1997.
5 Applies to the Macau Special Administrative Region with effect from 24 June 2005.

The United Kingdom notified the depositary that it extended the Convention to the following territories:

- Hong Kong*  12.XI.1974  6.V.1975
- Bermuda  19.IX.1980  1.XII.1980
- Anguilla
- British Antarctic Territory**
- British Virgin Islands  8.IX.1982  8.IX.1982
- Cayman Islands
- Falkland Islands and Dependencies**
- Montserrat
- Pitcairn, Henderson, Ducie and Oeno Islands
- St. Helena and Dependencies
- Turks and Caicos Islands  8.IX.1982  8.IX.1982
- United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus
- Isle of Man  27.VI.1995  27.VI.1995

The United States notified the depositary that it extended the Convention to the following territories:

- Puerto Rico, Guam, Canal Zone,  9.IX.1975  6.V.1975
- Virgin Islands, American Samoa,  9.IX.1975  6.V.1975
- Trust Territories of the Pacific Islands

Intervention 1969
The Netherlands notified the depositary that it extended the Convention to the following territories:

Suriname***, Netherlands Antilles 19.IX.1975 18.XII.1975
Aruba (with effect from 1 January 1986) –

* Ceased to apply to Hong Kong with effect from 1 July 1997.

** The depositary received the following communication dated 12 August 1986 from the Argentine delegation to the International Maritime Organization:

[Translation]

"... the Argentine Government rejects the extension made by the United Kingdom of Great Britain and Northern Ireland of the application to the Malvinas Islands, South Georgia and South Sandwich Islands of the ... International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties ... and reaffirms the rights of sovereignty of the Argentine Republic over those archipelagos which form part of its national territory.

"The General Assembly of the United Nations has adopted resolutions 2065(XX), 3160(XXVIII), 31/49, 37/9, 38/12 and 39/6 which recognize the existence of a sovereignty dispute relating to the question of the Malvinas Islands, urging the Argentine Republic and the United Kingdom to resume negotiations in order to find, as soon as possible, a peaceful and definitive solution to the dispute through the good offices of the Secretary-General of the United Nations who is requested to inform the General Assembly on the progress made. Similarly, the General Assembly of the United Nations at its fortieth session adopted resolution 40/21 of 27 November 1985 which again urges both parties to resume the said negotiations.

"... the Argentine Government also rejects the extension of its application to the so-called "British Antarctic Territory" made by the United Kingdom of Great Britain and Northern Ireland and, with respect to such extension and to any other declaration that may be made, reaffirms the rights of the Republic over the Antarctic Argentine Sector between longitude 25° and 74° west and latitude 60° south, including those rights relating to its sovereignty or corresponding maritime jurisdiction. It also recalls the safeguards concerning claims to territorial sovereignty in Antarctica provided in article IV of the Antarctic Treaty signed at Washington on 1 December 1959 to which the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland are Parties."

The depositary received the following communication dated 3 February 1987 from the United Kingdom Foreign and Commonwealth Office:

"The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the statement made by the Argentine Republic as regards the Falkland Islands and South Georgia and the South Sandwich Islands. The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and South Georgia and the South Sandwich Islands and, accordingly, their right to extend the application of the Treaties to the Falkland Islands and South Georgia and the South Sandwich Islands.

"Equally, while noting the Argentine reference to the provisions of Article IV of the Antarctic Treaty signed at Washington on 1 December 1959, the Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the sovereignty of the United Kingdom over the British Antarctic Territory, and to the right to extend the application of the Treaties in question to that Territory."

*** Has since become the independent State of Suriname and a Contracting State to the Convention.
Protocol relating to  
Intervention on the high seas in cases of pollution by substances other than oil, 1973, as amended

(Protocol relating to Intervention on the high seas in cases of pollution by substances other than oil, 1973, as amended)

Done at London, 2 November 1973
Entry into force: 30 March 1983

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### Intervention Prot. 1973

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Number of Contracting States: 56

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1. With a declaration or reservation.
2. Applies to the Hong Kong Special Administrative Region with effect from 1 July 1997.
3. Applies to the Macao Special Administrative Region with effect from 24 June 2005.
4. As from 26 December 1991 the membership of the USSR in the Protocol is continued by the Russian Federation.
5. As from 4 February 2003, the name of the State of the Federal Republic of Yugoslavia was changed to Serbia and Montenegro. The date of succession by Serbia and Montenegro to the Protocol is the date on which the Federal Republic of Yugoslavia assumed responsibility for its international relations.
6. Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to the Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Protocol with effect from the same date, i.e., 3 June 2006.

The United Kingdom declared ratification to be effective also in respect of:

- Anguilla
- Bermuda
- British Antarctic Territory*
- British Virgin Islands
- Cayman Islands
- Falkland Islands and Dependencies*
- Hong Kong**
- Montserrat
- Pitcairn, Henderson, Ducie and Oeno Islands
- St. Helena and Dependencies
- Turks and Caicos Islands
- United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus
- Isle of Man

The Netherlands declared ratification to be effective also in respect of:

- Netherlands Antilles

Aruba (with effect from 1 January 1986)

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1 July 1997.
### 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

### Contracting States at time of cessation of Convention

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1. Excluding Taiwan.
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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

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### Declaring Parties

#### Federal Republic of Germany
The instrument of ratification of the Federal Republic of Germany contains the following declaration in the English language:

“... with effect from the date on which the Protocol enters into force for the Federal Republic of Germany, it shall also apply to Berlin (West).”

#### Poland
(for text of the notification, see page 458)
### Fund Protocol 1992

**Protoce 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**

(FUND PROT 1992)*

Done at London,
27 November 1992
Entry into force: 30 May 1996

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* 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.
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### Part III - Status of Ratifications to IMO Conventions

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**Number of Contracting States** 114

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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
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:

**New Zeland**
The instrument of accession of New Zeland 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 Zeland with the Depositary”.

**Spain**
The instrument of accession by Spain contained the following declaration:

[Translation]
“In accordance with the provisions of article 30, paragraph 4 of the above mentioned Protocol, Spain declares that the deposit of its instrument of accession shall not take effect for the purpose of this article until the end of the six-month period stipulated in article 31 of the said Protocol”. 
### Fund Protocol 2003


(FUND PROT 2003)

Done at London, 16 may 2003

Entry into force: 3 March 2005

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Number of Contracting States: 31

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1. Extended to Greenland (3 March 2005) and Faroe Islands (19 June 2006).
2. With a declaration, reservation or statement.
3. Extended to the Isle of Man with effect from 15 September 2008.
Declarations, Reservations and Statements

Federal Republic of Germany

The following reservation accompanies the signature of the Convention by the Representative of the Federal Republic of Germany (in the English language):

“Pursuant to article 10 of the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, the Federal Republic of Germany reserves the right to provide by national law, that the persons liable under an international convention or national law applicable in the field of maritime transport may continue to be liable in addition to the operator of a nuclear installation on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator.”

This reservation was withdrawn at the time of deposit of the instrument of ratification of the Convention.

(1) Shall not apply to the Faroe Islands.
The instrument of ratification of the Government of the Federal Republic of Germany was accompanied by the following declaration (in the German language):

[Translation]

“That the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.

Italy

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the English language):

“It is understood that the ratification of the said Convention will not be interpreted in such a way as to deprive the Italian State of any right of recourse made according to the international law for the damages caused to the State itself or its citizens by a nuclear accident”.

Athens Convention relating to the Carriage of passengers and their luggage by sea

(PAL 1974)

Done at Athens:
13 December 1974
Entered into force:
28 April 1987

Convention d’Athènes relative au Transport par mer de passagers et de leurs bagages

(PAL 1974)

Signée à Athènes,
le 13 décembre 1974
Entrée en vigueur:
28 avril 1987

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Number of Contracting States: 28

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\(^1\) 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


\(^5\) Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

\(^6\) Applies to Macau Special Administrative Region with effect from 24 June 2005.

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* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1.VII.1997.
Declarations, Reservations and Statements

Argentina
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.

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(1) A communication dated 19 October 1983 from the Government of the United Kingdom, the full text of which was circulated by the depositary, includes the following:

“The Government of the United Kingdom of Great Britain and Northern Ireland reject each and every of these statements and assertions. The United Kingdom has no doubt as to its sovereignty over the Falkland Islands and thus its right to include them within the scope of application of international agreements of which it is a party. The United Kingdom cannot accept that the Government of the Argentine Republic has any rights in this regard. Nor can the United Kingdom accept that the Falkland Islands are incorrectly designated”.
Protocol to the Athens Convention relating to the Carriage of passengers and their luggage by sea (PAL PROT 1976)

Done at London, 19 November 1976
Entered into force: 30 April 1989

Protocole à la Convention d’Athènes relative au Transport par mer de passagers et de leurs bagages (PAL PROT 1976)

Signé à Londres, le 19 novembre 1976
Entré en vigueur: 30 avril 1989

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Number of Contracting States: 20
Argentina

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”.

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).
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.
6 Applies to Macau Special Administrative Region with effect from 24 June 2005.

* With a reservation made by the Argentine Republic and a communication received from the United Kingdom.
** Ceased to apply to Hong Kong with effect from 1.VII.1997.
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

Albania (accession) (denunciation – 16.III.2005)

Croatia (accession) (denunciation – 25.IX.2013)

Egypt (accession)

Luxembourg (accession)

Spain (accession) (denunciation 11.VI.2015)

Tonga (accession)

Number of Contracting States: 4

Protocol of 2002 to the Athens Convention relating to the carriage of passengers and their luggage by sea, 1974 (PAL PROT 2002)

Done at London, 1 November 2002
Entered into force: 23 April 2014
### Convention on Limitation of Liability for Maritime Claims

*LLMC 1976*

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Number of Contracting States: 19

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1. With a declaration
2. Article 19(3) of the Protocol provides that: “Where the number of States Parties is relevant in this Protocol, including but not limited to Articles 20 and 23 of this Protocol, the Regional Economic Integration Organization shall not count as a State Party in addition to its Member States which are States Parties.” Accordingly, the number of Contracting States remains unaltered with this accession.
3. The depositary received a communication, dated 8 May 2014, from the Foreign and Commonwealth Office in London, informing that the protocol was extended to Gibraltar on 8 May 2014.

### Convention sur la Limitation de la Responsabilité en matière de créances maritimes

*LLMC 1976*

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## LLMC 1976

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Number of Contracting States: 54

The Convention applies provisionally in respect of: Belize

[^1]: With a declaration, reservation or statement.
[^2]: With a notification under article 15(2).
[^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.I.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)

[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 8(1) of the Convention shall be the method of valuation applied by the International Monetary Fund"”.

Article 15(2)

Belgium

[Translation]

“"In accordance with the provisions of article 15, paragraph 2, Belgium will apply the provisions of the Convention to inland navigation"”.

France

[Translation]

“"... that no limit of liability is provided for vessels navigating on French internal waterways; - that, as far as ships with a tonnage of less than 300 tons are concerned, the general limits of liability are equal to half those established in article 6 of the Convention...for ships with a tonnage not exceeding 500 tons”.

Federal Republic of Germany

[Translation]

“"In accordance with art. 15, par. 2, first sentence, sub-par. (a) of the Convention, the system of limitation of liability to be applied to vessels which are, according to the law of the Federal Republic of Germany, ships intended for navigation on inland
waterways, is regulated by the provisions relating to the private law aspects of inland navigation.

In accordance with art. 15, par. 2, first sentence, sub-par. (b) of the Convention, the system of limitation of liability to be applied to ships up to a tonnage of 250 tons is regulated by specific provisions of the law of the Federal Republic of Germany to the effect that, with respect to such a ship, the limit of liability to be calculated in accordance with art. 6, par. 1 (b) of the Convention is half of the limitation amount to be applied with respect to a ship with a tonnage of 500 tons”.

Netherlands
Paragraph 2(a)
“The Act of June 14th 1989 (Staatsblad 239) relating to the limitation of liability of owners of inland navigation vessels provides that the limits of liability shall be calculated in accordance with an Order in Council.

The Order in Council of February 19th 1990 (Staatsblad 96) adopts the following limits of liability in respect of ships intended for navigation on inland waterways.

I. Limits of liability for claims in respect of loss of life or personal injury other than those in respect of passengers of a ship, arising on any distinct occasion:
   1. for a ship non intended for the carriage of cargo, in particular a passenger ship, 200 Units of Account per cubic metre of displacement at maximum permitted draught, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;
   2. for a ship intended for the carriage of cargo, 200 Units of Account per ton of the ship’s maximum deadweight, plus, for ships equipped with mechanical means of propulsion, 700 Units of Account for each kW of the motorpower of the means of propulsion;
   3. for a tug or a pusher, 700 Units of Account for each kW of the motorpower of the means of propulsion;
   4. for a pusher which at the time the damage was caused was coupled to barges in a pushed convoy, the amount calculated in accordance with 3 shall be increased by 100 Units of Account per ton of the maximum deadweight of the pushed barges; such increase shall not apply if it is proved that the pusher has rendered salvage services to one or more of such barges;
   5. for a ship equipped with mechanical means of propulsion which at the time the damage was caused was moving other ships coupled to this ship, the amount calculated in accordance with 1, 2 or 3 shall be increased by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other ships; such increase shall not apply if it is proved that this ship has rendered salvage services to one or more of the coupled ships;
   6. for hydrofoils, dredgers, floating cranes, elevators and all other floating appliances, pontoons or plant of a similar nature, treated as inland navigation ships in accordance with Article 951a, paragraph 4 of the Commercial Code, their value at the time of the incident;
   7. where in cases mentioned under 4 and 5 the limitation fund of the pusher or the mechanically propelled ships is increased by 100 Units of Account per ton of maximum deadweight of the pushed barges or per cubic metre of displacement of the other coupled ships, the limitation fund of each barge or of each of the other coupled ships shall be reduced by 100 Units of Account per ton of the maximum deadweight of the barge or by 100 Units of Account per ton of the maximum deadweight or per cubic metre of displacement of the other vessel with respect to claims arising out of the same incident; however, in no case shall the limitation amount be less than 200,000 Units of Account.

II. The limits of liability for claims in respect of any damage caused by water pollution, other than claims for loss of life or personal injury, are equal to the limits mentioned under I.

III. The limits of liability for all other claims are equal to half the amount of the limits mentioned under I.

IV. In respect of claims arising on any distinct occasion for loss of life or personal
injury to passengers of an inland navigation ship, the limit of liability of the owner thereof shall be an amount equal to 60,000 Units of Account multiplied by the number of passengers the ship is authorized to carry according to its legally established capacity or, in the event that the maximum number of passengers the ship is authorized to carry has not been established by law, an amount equal to 60,000 Units of Account multiplied by the number of passengers actually carried on board at the time of the incident. However, the limitation of liability shall in no case be less than 720,000 Units of Account and shall not exceed the following amounts:

(i) 3 million Units of Account for a vessel with an authorized maximum capacity of 100 passengers;
(ii) 6 million Units of Account for a vessel with an authorized maximum capacity of 180 passengers;
(iii) 12 million Units of Account for a vessel with an authorized maximum capacity of more than 180 passengers;

Claims for loss of life or personal injury to passengers have been defined in the same way as in Article 7, paragraph 2 of the Convention on Limitation of Liability for Maritime Claims, 1976. The Unit of Account mentioned under I-IV is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976.

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)**

**Protocole de 1996 modifiant la convention de 1976 sur la Limitation de la Responsabilité en matière de créances maritimes**

**Protocole de 1996 to amend the convention on Limitation of Liability for maritime claims, 1976**

(LLMC PROT 1996)

Done at London, 2 May 1996

Entered into force: 13 May 2004

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Number of Contracting States: 49

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

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### PART III - STATUS OF RATIFICATIONS TO IMO CONVENTIONS

**Salvage 1989**  
**Assistance 1989**

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Number of Contracting States: 65

1 With a reservation or statement  
2 With a notification  
3 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.  
5 Applies to Macau Special Administrative Region with effect from 24 June 2005.

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).  
** Ceased to apply to Hong Kong with effect from 1.VII.1997.
Declarations, Reservations and Statements

Canada
The instrument of ratification of Canada was accompanied by the following reservation: “Pursuant to Article 30 of the International Convention on Salvage, 1989, the Government of Canada reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

China
The instrument of accession of the People’s Republic of China contained the following statement:

[Translation]
“That in accordance with the provisions of article 30, paragraph 1 of the International Convention on Salvage, 1989, the Government of the People’s Republic of China reserves the right not to apply the provisions of article 30, paragraphs 1(a), (b) and (d) of the said Convention”.

Islamic Republic of Iran
The instrument of accession of the Islamic Republic of Iran contained the following reservation:

“The Government of the Islamic Republic of Iran reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b), (c) and (d)”.

Ireland
The instrument of ratification of Ireland contained the following reservation:

“Reserve the right of Ireland not to apply the provisions of the Convention specified in article 30(1)(a) and (b) thereof”.

Mexico
The instrument of ratification of Mexico contained the following reservation and declaration:

[Translation]
“The Government of Mexico reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b) (c) and (d), pointing out at the same time that it considers salvage as a voluntary act “.

Norway
The instrument of ratification of the Kingdom of Norway contained the following reservation:

“In accordance with Article 30, subparagraph 1(d) of the Convention, the Kingdom of Norway reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

Saudi Arabia(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

(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 Is-
2. The Kingdom of Saudi Arabia reserves its right not to implement the rules of this instrument of accession to the situations indicated in paragraphs (a), (b), (c) and (d) of article 30 of this instrument."

**Spain**

The following reservations were made at the time of signature of the Convention:

[Translation]

“In accordance with the provisions of article 30.1(a), 30.1(b) and 30.1(d) of the International Convention on Salvage, 1989, the Kingdom of Spain reserves the right not to apply the provisions of the said Convention:
– when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;
– when the salvage operations take place in inland waters and no vessel is involved.

For the sole purposes of these reservations, the Kingdom of Spain understands by ‘inland waters’ not the waters envisaged and regulated under the name of ‘internal waters’ in the United Nations Convention on the Law of the Sea but continental waters that are not in communication with the waters of the sea and are not used by seagoing vessels. In particular, the waters of ports, rivers, estuaries, etc., which are frequented by seagoing vessels are not considered as ‘inland waters’:
– when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

**Sweden**

The instrument of ratification of the Kingdom of Sweden contained the following reservation:

“Referring to Article 30.1(d) Sweden reserves the right not to apply the provisions of the Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

**United Kingdom**

The instrument of ratification of the United Kingdom of Great Britain and Northern Ireland contained the following reservation:

“In accordance with the provisions of article 30, paragraph 1(a), (b) and (d) of the Convention, the United Kingdom reserves the right not to apply the provisions of the Convention when:
(i) the salvage operation takes place in inland waters and all vessels involved are of inland navigation; or
(ii) the salvage operation takes place in inland waters and no vessel is involved; or .
(iii) the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

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.”
International Convention on Oil pollution preparedness, response and co-operation 1990 (OPRC 1990)

Done at London: 30 November 1990
Entered into force 13 May 1995.
Status as 30 June 2006

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### Protocol on preparedness, response and co-operation to pollution incidents by hazardous and noxious substances, 2000

**(OPRC-HNS 2000)**

Done at London, 15 March 2000

Entered into force: 14 June 2007

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Number of Contracting States: 107

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1. With a reservation.
2. Applies to Aruba with effect from 13 October 2006.
3. Applies to the Netherlands Antilles with effect from 18 October 2007.

### Protocole sur la préparation, la lutte et la coopération en matière d’incidents de pollution par des substances nocives et potentiellement dangereuses, 2000

**(OPRC-HNS Protocole)**

Fait à Londres, le 15 Mars 2000

Entrée en vigueur: 14 Juin 2000

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### OPRC-HNS 2000

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Number of Contracting States: 33

* Extended to Macao Special Administrative Region
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 à Londres le 3 mai 1996
Pas encore en vigueur.

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Number of Contracting States: 14.

1 With a reservation or statement.

International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (BUNKER 2001)
Done at London, 23 March 2001
Entered into force: 21 November 2008

Convention Internationale sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures de soute (BUNKER 2001)
Signée à Londres le 23 Mars 2001
Entrée en vigueur: 21 Novembre 2008

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Number of Contracting States: 78.

<sup>1</sup> With a reservation or declaration.

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**Convention for the suppression of unlawful acts against the safety of maritime navigation, 1988**

(SUA 1988)

Done at Rome, 10 March 1988


**Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime, 1988**

(SUA 1988)

Signée a Rome le 10 Mars 1988


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Contracting States: 164.

1 With a reservation, declaration or statement.
2 With a notification under article 6.
3 On 3 October 1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded* to the Convention on 14 April 1989.
4 The United Kingdom declared its ratification to be effective also in respect of the Isle of Man (notification received 8 February 1999).
5 Extended to Aruba from 15 December 2004 the date the notification was received.
6 With a reservation under articles 11 and 16, paragraph 1
7 China declared that the Convention would be effective in respect of the Hong Kong Special Administrative Region (HKSAR) with effect from 20 February 2006.
8 Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Convention with effect from the same date, i.e. 3 June 2006.
Protocol for the suppression of unlawful acts against the safety of fixed platforms located on the continental shelf, 1988

(SUA PROTOCOL 1988)

Done at Rome, 10 March 1988

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### SUA Protocol 1988

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Number of Contracting States: 151

1. With a notification under article 3.
2. With a reservation, declaration or statement.
* With a reservation.
4. The United Kingdom declared its ratification to be effective also in respect of the Isle of Man. (notification received 8 February 1999).
5. Applies to Aruba with effect from 17 January 2006.
6. China declared that the Protocol would be effective in respect of the Hong Kong Special Administrative Region (HKSAR) with effect from 20 February 2006.
7. Following the dissolution of the State Union of Serbia and Montenegro on 3 June 2006, all Treaty actions undertaken by Serbia and Montenegro continue to be in force with respect to Republic of Serbia. The Republic of Montenegro has informed that it wishes to succeed to this Protocol with effect from the same date, i.e. 3 June 2006.
### SUA Protocol 2005

**Protocol of 2005 to the Convention for the suppression of unlawful acts against the safety of maritime navigation**

(SUA PROT 2005)

Done at London, 14 October 2005  
Entry into force: 28 July 2010

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Number of Contracting States: 28

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1 Acceptance for the European part of the Netherlands and Caribbean part of the Netherlands (the latter comprising Bonaire, Saint Eustatius and Saba) only.
Status of ratifications to UN Conventions

STATUS OF THE RATIFICATIONS OF
AND ACCESSIONS TO UNITED NATIONS
AND UNITED NATIONS/IMO CONVENTIONS
IN THE FIELD OF
PUBLIC AND PRIVATE MARITIME LAW

ETAT DES RATIFICATIONS ET ADHESIONS
AUX CONVENTIONS DES NATIONS UNIES ET
AUX CONVENTIONS DES NATIONS UNIES/OMI
EN MATIERE DE
DROIT MARITIME PUBLIC
ET DE DROIT MARITIME PRIVE

r = ratification
a = accession
A = acceptance
AA = approval
S = definitive signature

Notes de l’éditeur / Editor’s notes:
- Les dates mentionnées sont les dates du dépôt des instruments.
- The dates mentioned are the dates of the deposit of instruments.
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1 Applied to the Hong Kong Special Administrative Region with effect from 1.VII.1997.
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### United Nations Convention on the Carriage of Goods by Sea

**Hamburg, 31 March 1978**

**“HAMBURG RULES”**

Entered into force: 1 November 1992

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### Convention des Nations Unies sur le Transport de Marchandises par Mer

**Hambourg 31 mars 1978**

**“REGLES DE HAMBOURG”**

Entrée en vigueur: 1 novembre 1992

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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.
United Nations Convention on the International multimodal transport of goods
Geneva, 24 May 1980
Not yet in force.

Convention des Nations Unies sur le Transport multimodal international de marchandises
Genève 24 mai 1980
Pas encore en vigueur.

Burundi (a) 4.IX.1998
Chile (r) 7.IV.1982
Georgia (a) 21.III.1996
Lebanon (a) 1.VI.2001
Liberia (a) 16.IX.2005
Malawi (a) 2.II.1984
Mexico (r) 11.II.1982
Morocco (r) 21.I.1993
Rwanda (a) 15.IX.1987
Senegal (r) 25.X.1984
Zambia (a) 7.X.1991

Montego Bay 10 December 1982
Entered into force:
16 November 1994

Convention des Nations Unies sur les Droit de la Mer
Montego Bay 10 décembre 1982
Entrée en vigueur:
16 Novembre 1994

Albania 23.VI.2003
Algeria 11.VI.1996
Angola 5.XII.1990
Antigua and Barbuda 2.II.1989
Argentina 1.XII.1995
Armenia 9.XII.2002
Australia 5.X.1994
Austria 14.VII.1995
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Registration of ships 1986

**United Nations Convention on Conditions for Registration of ships**

Geneva, 7 February 1986
Not yet in force.

- Albania (a) 4.X.2004
- 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
- Liberia (a) 16.IX.2005
- Libyan Arab Jamahiriya (r) 28.II.1989
- Mexico (r) 21.I.1988
- Morocco (a) 19.IX.2012
- Oman (a) 18.X.1990
- Syrian Arab Republic (a) 29.IX.2004

**Contribution des Nations Unies sur les Conditions d’Immatriculation des navires**

Genève, 7 février 1986
Pas encore entrée en vigueur.

**United Nations Convention on the Liability of operators of transport terminals in the international trade**

Done at Vienna 19 April 1991
Not yet in force.

- Gabon (a) 15.XII.2004
- Georgia (a) 21.III.1996
- Egypt (a) 6.IV.1999
- Paraguay (a) 19.VII.2005

**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.
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INTERNATIONAL CONVENTION ON ARREST OF SHIPS, 1999

**Convenzione Internazionale di arresto dei navali, 1999**

Will enter into force on 14 September 2011

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<td><strong>Bulgaria (r)</strong></td>
<td>21.II.2001</td>
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<tr>
<td><strong>Ecuador (r)</strong></td>
<td>15.X.2010</td>
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<td><strong>Estonia (a)</strong></td>
<td>11.V.2001</td>
</tr>
<tr>
<td><strong>Latvia (a)</strong></td>
<td>7.XII.2001</td>
</tr>
<tr>
<td><strong>Liberia (a)</strong></td>
<td>16.IX.2005</td>
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<tr>
<td><strong>Spain (a)</strong></td>
<td>7.VI.2002</td>
</tr>
<tr>
<td><strong>Syrian Arab Republic (a)</strong></td>
<td>16.X.2002</td>
</tr>
</tbody>
</table>

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1. At the time of its accession, the Kingdom of Spain, in accordance with article 10, paragraph 1 (b), reserves the right to exclude the application of this Convention in the case of ships not flying the flag of a State party.

2. The accession of the Syrian Arab Republic to this Convention shall not in any way be construed to mean recognition of Israel and shall not lead to entry with it into any of the transactions regulated by the provisions of the Convention.

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STATUS OF THE RATIFICATIONS TO UNESCO CONVENTIONS

UNESCO Convention on the Protection of the Underwater Cultural Heritage

Done at Paris 2 November 2001*
In accordance with its Article 27, this Convention shall enter into force on 2 January 2009 for those States that have deposited their respective instruments of ratification, acceptance, approval or accession on or before 2 October 2008. It shall enter into force for any other State three months after the deposit by that State of its instrument of ratification, acceptance, approval or accession.

<table>
<thead>
<tr>
<th>Country (ratification)</th>
<th>Date of deposit of instrument</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria (ratification)</td>
<td>06.X.2003</td>
</tr>
<tr>
<td>Cambodia (ratification)</td>
<td>24.XI.2007</td>
</tr>
<tr>
<td>Congo, Democratic Republic of (ratification)</td>
<td>28.IX.2010</td>
</tr>
<tr>
<td>Croatia (ratification)</td>
<td>01.XII.2004</td>
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<tr>
<td>Cuba (ratification)</td>
<td>26.V.2008</td>
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<tr>
<td>Ecuador (ratification)</td>
<td>01.XII.2006</td>
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<tr>
<td>France (ratification)</td>
<td>7.II.2013</td>
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<td>Gabon (acceptance)</td>
<td>1.II.2010</td>
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<tr>
<td>Grenada (ratification)</td>
<td>15.I.2009</td>
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<tr>
<td>Haiti (ratification)</td>
<td>9.XI.2009</td>
</tr>
<tr>
<td>Honduras (ratification)</td>
<td>23.VII.2010</td>
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<tr>
<td>Iran (Islamic Republic of) (ratification)</td>
<td>16.VI.2009</td>
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<tr>
<td>Italy (ratification)</td>
<td>8.I.2010</td>
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<tr>
<td>Jamaica (ratification)</td>
<td>9.VIII.2011</td>
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<td>Jordan (ratification)</td>
<td>2.XII.2009</td>
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<td>Lebanon (acceptance)</td>
<td>08.I.2007</td>
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<td>Libyan Arab Jamahiriya (ratification)</td>
<td>23.VI.2005</td>
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<td>Lithuania (ratification)</td>
<td>12.VI.2006</td>
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<td>Mexico (ratification)</td>
<td>05.VIII.2006</td>
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<tr>
<td>Montenegro (ratification)</td>
<td>18.VII.2008</td>
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<tr>
<td>Morocco (ratification)</td>
<td>20.VI.2011</td>
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<tr>
<td>Namibia (ratification)</td>
<td>9.III.2011</td>
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<tr>
<td>Nigeria (ratification)</td>
<td>21.X.2005</td>
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<tr>
<td>Palestine (ratification)</td>
<td>8.XII.2011</td>
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<td>Panama (ratification)</td>
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<td>Paraguay (ratification)</td>
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<tr>
<td>Portugal (ratification)</td>
<td>21.IX.2006</td>
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<tr>
<td>Romania (acceptance)</td>
<td>31.VII.2007</td>
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<tr>
<td>Saint Kitts and Nevis (ratification)</td>
<td>3.XII.2009</td>
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<td>Saint Lucia (ratification)</td>
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<td>Saint Vincent and the Grenadines (ratification)</td>
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<td>Slovakia (ratification)</td>
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<td>Spain (ratification)</td>
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<td>Togo (ratification)</td>
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<td>Trinidad and Tobago (ratification)</td>
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<td>Tunisia (ratification)</td>
<td>15.I.2009</td>
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<tr>
<td>Ukraine (ratification)</td>
<td>27.XII.2006</td>
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</table>
STATUS OF THE RATIFICATIONS OF
AND ACCESSIONS TO UNIDROIT CONVENTIONS
IN THE FIELD OF PRIVATE MARITIME LAW

ETAT DES RATIFICATIONS ET ADHÉSIONS
AUX CONVENTIONS D’UNIDROIT EN MATIÈRE
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
Ukraine (a) 5.XII.2006
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. RAHU SEN.
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.
Conferences of the Comité Maritime International

X. PARIS - 1911
President: Mr. Paul GOVARE.
Subjects: Limitation of Shipowners’ Liability in the event of loss of life or personal injury - Freight.

XI. COPENHAGEN - 1913
President: Dr. J.H. KOCH.

XII. ANTWERP - 1921
President: Mr. Louis FRANCK.

XIII LONDON - 1922
President: Sir Henry DUKE.

XIV. GOTHENBURG - 1923
President: Mr. Efiel LÖFGREN.

XV. GENOA - 1925
President: Dr. Francesco BERLINGIERI.

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.

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
Conferences of the Comité Maritime International

relating to Carriage by Sea of Passengers and their Luggage.

XXIX. ANTWERP - 1972
President: Mr. Albert Lilar
Subjects: Revision of the Constitution of the International Maritime Committee.

XXX. HAMBURG - 1974
President: Mr. Albert Lilar

XXX. RIO DE JANEIRO - 1977
President: Prof. Francesco Berlingieri

XXXI. 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.

XXXII. LISBON- 1985
President: Prof. Francesco Berlingieri

XXXIV. PARIS - 1990
President: Prof. Francesco Berlingieri

XXXV. SYDNEY - 1994
President: Prof. Allan Philip

XXXVI. ANTWERP – 1997
CENTENARY CONFERENCE
President: Prof. Allan Philip

XXXVII. SINGAPORE – 2001
President: Patrick Griggs

XXXVIII. VANCOUVER – 2004
President: Patrick Griggs
Chartered Vessels - Implementation of the Salvage Convention.

XXXIX – ATHENS 2008
President: Jean-Serge Rohart
Subjects:
Places of Refuge – Procedural Rules

XL – BEIJING 2012
President: Karl-Johan Gombrii
Subjects:

XLI – HAMBURG 2014
President: Stuart Hetherington
Subjects: