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PART I

Organization of the CMI

Comité Maritime International

CONSTITUTION

2001[1]

PART I - GENERAL

Article 1
Name and Object

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

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

Article 2
Existence and Domicile

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

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

Comité Maritime International

STATUTS

2001[1]

Ière PARTIE - DISPOSITIONS GENERALES

Article 1er
Nom et objet

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

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

Article 2
Existence et siège

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

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

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

Article 3
Membership and Liability
I

a) The voting Members of the Comité Maritime International are national (or multinational) Associations of Maritime Law elected to membership by the Assembly, the object of which Associations must conform to that of the Comité Maritime International and the membership of which must be fully open to persons (individuals or bodies having juridical personality in accordance with their national law and custom) who either are involved in maritime activities or are specialists in maritime law. Member Associations must be democratically constituted and governed, and must endeavour to present a balanced view of the interests represented in their Association.
Where in a State there is no national Association of Maritime Law in existence, and an organization in that State applies for membership of the Comité Maritime International, the Assembly may accept such organization as a Member of the Comité Maritime International if it is satisfied that the object of such organization, or one of its objects, is the unification of maritime law in all its aspects. Whenever reference is made in this Constitution to Member Associations, it will be deemed to include any organization admitted as a Member pursuant to this Article.
Only one organization in each State shall be eligible for membership, unless the Assembly otherwise decides. A multinational Association is eligible for membership only if there is no Member Association in any of its constituent States.
The national (or multinational) Member Associations of the Comité Maritime International are identified in a list to be published annually.

b) Where a national (or multinational) Member Association does not possess juridical personality according to the law of the country where it is established, the members of such Member Association who are individuals or bodies having juridical personality in accordance with their national law and custom, acting together in accordance with their national law, shall be deemed to constitute that Member Association for purposes of its membership of the Comité Maritime International.

c) Individual members of Member Associations may be elected by the Assembly as Titulary Members of the Comité Maritime International upon the proposal of the Association concerned, endorsed by the Executive Council. Individual persons may also be elected by the Assembly as Titulary Members upon the proposal of the Executive Council. Titulary Membership is of an honorary nature and shall be decided having regard to the contributions of the candidates to the work of the Comité Maritime International and/or to their services rendered in legal or maritime affairs in furtherance of international uniformity of

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

Article 3
Membres et responsabilité
I

a) Les Membres avec droit de vote du Comité Maritime International sont les Associations nationales (ou multinationales) de droit maritime, élues Membres par l'Assemblée, dont les objectifs sont conformes à ceux du Comité Maritime International et dont la qualité de Membre doit être accessible à toutes personnes (personnes physiques ou personnes morales légalement constituées selon les lois et usages de leur pays d'origine) qui, ou bien participent aux activités maritimes, ou bien sont des spécialistes du droit maritime. Chaque Association membre doit être constituée et gérée de façon démocratique et doit maintenir l'équilibre entre les divers intérêts dans son sein.
   Si dans un pays il n'existe pas d'Association nationale et qu'une organisation de ce pays pose sa candidature pour devenir Membre du Comité Maritime International, l'Assemblée peut accepter une pareille organisation comme Membre du Comité Maritime International après s'être assurée que l'objectif, ou un des objectifs, poursuivis par cette organisation est l'unification du droit maritime sous tous ses aspects.
   Toute référence dans les présents statuts à des Associations membres comprendra toute organisation qui aura été admise comme Membre conformément au présent article.
   Une seule organisation par pays est éligible en qualité de Membre du Comité Maritime International, à moins que l'Assemblée n'en décide autrement. Une association multinationale n'est éligible en qualité de Membre que si aucun des Etats qui la composent ne possède d'Association membre. Une liste à publier annuellement 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.

c) Des membres individuels d'Associations Membres peuvent être élus Membres titulaires du Comité Maritime International par l'Assemblée sur proposition émanant de l'Association intéressée et ayant recueilli l'approbation du Conseil exécutif. Des personnes peuvent aussi, à titre individuel, être élues par l'Assemblée comme Membres titulaires sur proposition du Conseil exécutif. L'affiliation comme Membre titulaire aura un caractère honorifique et sera décidée en tenant compte des contributions apportées par les candidats à l'oeuvre du Comité Maritime

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;

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

d) Les nationaux des pays où il n'existe pas d'Association membre mais qui ont fait preuve d'intérêt pour les objectifs du Comité Maritime International peuvent, sur proposition du Conseil exécutif, être élus comme Membres Provisoires. L'un des objectifs essentiels du statut de Membre Provisoire est de favoriser la mise en place et l'organisation, au plan national ou régional, de nouvelles Associations de Droit Maritime affiliées au Comité Maritime International. Le statut de Membre Provisoire n'est pas normalement destiné à être permanent, et la situation de chaque Membre Provisoire sera examinée tous les trois ans. Cependant, les personnes physiques qui sont Membres Provisoires depuis cinq ans au moins peuvent, sur proposition du Conseil exécutif, être élues Membres titulaires par l'Assemblée, à concurrence d'un maximum de trois par pays. Une liste à publier annuellement énumèrera les Membres Provisoires du Comité Maritime International.

e) L'Assemblée peut élire Membre honoraire, jouissant des droits et privilèges d'un Membre titulaire mais dispensé du paiement des cotisations, toute personne physique ayant rendu des services exceptionnels au Comité Maritime International. Des membres honoraires peuvent, sur proposition du Conseil exécutif, être désignés comme Membres honoraires du Bureau, y compris comme Président honoraire ou Vice-Président honoraire, si ainsi proposé par le Conseil exécutif. Les membres honoraires ne relèvent d'aucune Association membre ni d'aucun Etat, mais sont à titre personnel membres du Comité Maritime International pour l'ensemble de ses activités.
Une liste à publier annuellement énumèrera les membres honoraires du Comité Maritime International.

f) Les organisations internationales qui s'intéressent aux objectifs du Comité Maritime International peuvent être élues membres consultatifs. Une liste à publier annuellement énumèrera les membres consultatifs du Comité Maritime International.

II

a) Des membres peuvent être exclus du Comité Maritime International en raison
   (i) de leur carence dans le paiement de leur contribution;
   (ii) de leur conduite faisant obstacle à l'objet du Comité tel qu'énoncé aux statuts;
   (iii) de leur conduite susceptible de discréditer le Comité ou son oeuvre.

b) (i) Une requête d'exclusion d'un Membre sera faite:
   (A) par toute Association Membre ou par un Membre titulaire;

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 présumée être retirée.

f) (i) Dans le cas d'une requête d'exclusion appuyée sur une carence de paiement prévue à l'alinéa II(a) ci-dessus, le Membre sera exclu à la majorité simple des suffrages exprimés par les Membres en droit de voter.

(ii) En cas de requête d'exclusion appuyée sur un motif prévu au II a) (ii) et (iii) ci-dessus, le Membre sera exclu par un vote des deux tiers des suffrages exprimés par les Membres en droit de voter.

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

III.

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

PART II – ASSEMBLY

Article 4
Composition

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

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

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

Article 5
Meetings and Quorum

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

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

Article 6
Agenda and Voting

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

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

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

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

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

Article 9
Le Président

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

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

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

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

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

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

Article 10

Vice-Presidents

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

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

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

Article 11

Secretary-General

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

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

Article 12

Treasurer

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

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

The Treasurer shall submit the financial statements and the proposed

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

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

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

Article 10
Les Vice-Présidents

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

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

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

Article 11
Le Secrétaire général

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

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

Article 12
Le Trésorier

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

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

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

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

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

Article 13

Administrator

The functions of the Administrator are:

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

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

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

Article 14

Executive Councillors

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

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

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

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

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

Article 13
L'Administrateur

Les fonctions de l'Administrateur consistent à:

a) envoyer les convocations à toutes réunions de l'Assemblée et du Conseil exécutif, des conférences internationales, séminaires et colloques, ainsi qu'à toutes réunions de comités, de commissions internationales et de groupes de travail,
b distribuer les ordres du jour, procès-verbaux et rapports de ces réunions,
c) prendre toutes les dispositions administratives utiles en vue de ces réunions,
d) entreprendre toute action, de sa propre initiative ou par délégation, nécessaire pour donner plein effet aux décisions de nature administrative prises par l'Assemblée, le Conseil exécutif, et le Président,
e) assurer la distribution de rapports et documents 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.

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

Article 14
Les Conseillers exécutifs

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

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

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

Article 15
Nominations

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

The Nominating Committee shall consist of:

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

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

On behalf of the Nominating Committee, the chairman shall first determine whether any officers eligible for re-election are available to serve for an additional term. He shall then solicit the views of the Member Associations concerning candidates for nomination. The Nominating Committee shall then make nominations, taking such views into account.

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

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

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

Article 16
Immediate Past President

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

PART IV – EXECUTIVE COUNCIL

Article 17
Composition

The Executive Council shall consist of:

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

Article 15
Présentations de candidatures

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

Le Comité de Présentation de candidatures se compose de:

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

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

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

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

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

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

Article 16
Le Président sortant

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

4ème PARTIE - CONSEIL EXÉCUTIF

Article 17
Composition

Le Conseil exécutif est composé:

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

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

Article 18
Functions

The functions of the Executive Council are:

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

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

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

Article 19
Meetings and Quorum

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

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

PART V – INTERNATIONAL CONFERENCES

Article 20
Composition and Voting

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

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

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

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

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

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

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

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

Article 19
Réunions et quorum

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

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

5ème PARTIE - CONFÉRENCES INTERNATIONALES

Article 20
Composition et Votes

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

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

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

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

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

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

PART VI – FINANCE AND GOVERNING LAW

Article 21
Arrears of Subscriptions

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

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

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

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

Article 22
Financial Matters and Liability

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

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

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

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

Article 23
Governing Law

Any issue not resolved by reference to this Constitution shall be resolved by reference to Belgian law, including the Act of 25th October 1919 (Moniteur belge of 5th November 1919), as subsequently amended, granting

6ème PARTIE - FINANCES

Article 21
Retards dans le paiement de Cotisations

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

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

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

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

Article 22
Questions financières et responsabilités

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

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

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

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

Article 23
Loi applicable

Toute question non résolue par les présents statuts le sera par application du droit belge, notamment par la loi du 25 octobre 1919 (Moniteur belge 5 novembre 1919) accordant la personnalité civile aux associations

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 [(2)]

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

Article 25
Dissolution and Procedure for Liquidation

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

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

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]

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[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*

1996[1]

Rule 1
Right of Presence

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

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

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

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

Rule 2
Right of Voice

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

Rule 3
Points of Order

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

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1. Adopted in Brussels, 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

1999[1]

Titulary Members

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

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

Provisional Members

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

Periodic Review

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

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

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

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

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

[4] Educated: Wellington College, UK; read Law at Pembroke College, Cambridge, UK, awarded Exhibition 1971, MA 1975. Partner Ebsworth and Ebsworth, Sydney. 1981-1997. Partner Withnell Hetherington 1998. Called to the Bar of England and Wales at Grays Inn 1973. Admitted as a solicitor in Victoria and New South Wales 1978. President of the Maritime Law Association of Australia and New Zealand (1991-1994). Titulary Member CMI. Author Annotated Admiralty Legislation (1989). Co-author with Professor James Crawford of Admiralty Section of Transport Section in Law Book Company's "Laws of Australia".

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

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

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

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

[9] Born 24 January 1956 in Santiago, Chile. Tulane University School of Law, *Juis 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 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.

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

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

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

Professional extension: Member of the South African Maritime Law Association since its inception in 1974. Past Executive Councillor and President of the MLA. Served on SA Transport Advisory Committee 1990 –19940 Chair of Maritime Transport Policy Review Group appointed by the SA government in 1994 to advise transport policy reform. Co-draftsman of Green Paper and White Paper on maritime transport. Frequent court appointed referee in admiralty, and arbitrator of maritime disputes.

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

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

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

[12] Born in 1934 in Sebastopol; married; graduated from the Law School of the Institute of Foreign Trade in Moscow; 1961/62 schoo1 year in the University of Michigan, USA; in 1963 got the degree of candidate of legal sciences at the Moscow Institute of International Relations where now is a professor in the Private International and Civil Law Department; acted as arbitrator in about 600 international commercial and maritime cases in Russia and abroad, particularly in Stockholm, Warsaw, London, Beijing, Geneva, Zurich, Kiev; since 1972 the president of the Maritime Arbitration Commission also a member of the Presidium of the International Commercial Arbitration Court of the Russian Chamber of Commerce and Industry; Vice-President of the Russian Association of Maritime Law and International Law; participated as an expert in international organizations including UNCITRAL (since 1970), Council of Mutual Economic Assistance, International Council for Commercial Arbitration, UN

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Compensation Commission, Economic Commission for Europe, Hague Conference of Private International Law and at diplomatic conferences for adoption of conventions on sale of goods (1974, 1980, 1985), sea carriage (Hamburg, 1978), liability of transport terminals (Vienna, 1990), arbitration (1972, 1976, 1985, 1998) etc.; have books, articles and other publications on legal matters of international commerce, including many writings on arbitration and maritime law. Honours Jurist of the Russian Federation (1994); member of the Russian President's Council for Judicial Reforms (appointed in 1996, reappointed in 2000 and 2004); awarded Swedish Order "Polar Star" (2003).

[13] A licensed PRC lawyer and the Senior Partner of Henry & Co. Law Firm of Guangdong, PR China. Received his B. Sc. (ocean navigation) in 1983, LL.M. (maritime and commercial law) in 1988 from Dalian Maritime University and his Ph.D. (international private law) in 2000 from Wuhan University. Member of the Standing Committee of China Maritime Law Association. Guest Professor of Dalian Maritime University. An arbitrator of both China Maritime Arbitration Commission and China International Economic and Trade Arbitration Commission. Supporting member of the London Maritime Arbitrators Association. Appointed in October 2002 Chairman of the Maritime & Transport Law Committee of the International Bar Association.

[14] Gr. J. Timagenis has Degree in law (1969) and a Degree in Economics and Political Sciences (1971), from the University of Athens, a Master Degree (LL.M) (1972) and a Ph.D (1979) from the University of London. He was admitted at the Bar in 1971 and qualified to practice before the Supreme Court in 1981. In addition to his practice he has lectured at the University of Athens (1973-1976 Civil Litigation), at the Naval Academy (1978-1982 Law of the Sea), Piraeus Bar Seminars for new lawyers (1976-1996 Civil litigation). He has acted as arbitrator for Greek Chamber of Shipping arbitrations and he has been Chairman of the Board of the Seamen's Pension Fund (1989-1995), which is the main social insurance organisation of Greek seamen and he is presently member of the Executive Council of CMI. He has participated to many international Maritime Conferences at United Nations and IMO as member of the delegation of Greece, including the Third United Nation Conference on the Law of the Sea (Caracas–Geneva–New York 1974-1982). He is member to many national and international professional associations. He has been author of many books and articles including: The International Control of Marine Pollution (Oceana Publications, Bobbs Ferry, New York – Sitjhoff, The Netherlands). 1980 2 Volumes pp. LVII + 878.

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Total Membership: 127 (Corporate: 79/Individual: 42; Overseas: 5; Student: 1)

Breakdown by industry sector

Academic: 1; Arbitrators/Insurance/Claims Services: 24; Legal profession: 67; Shipping industry/Port Operations: 20; Others: 15

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Individual members: 150

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PART II

The Work of the CMI

CAPE TOWN COLLOQUIUM
12-15 FEBRUARY 2006

CONFERENCE DOCUMENTS

A. SPEECHES

OPENING SPEECH BY ANDREW PIKE

PRESIDENT OF THE SOUTH AFRICAN MARITIME LAW ASSOCIATION

Ladies and Gentlemen,

Welcome to Cape Town! It is my privilege and gives me great pleasure to be the opening act for this CMI Colloquium and to welcome you to the Mother City.

It is very exciting to see so many of you participating in this Colloquium: as hosts we have had a few sleepless nights wondering whether enough people would come from all around the world. The fact that as I stand before you I have more grey hair than in my photograph in the conference brochure is no small thanks to James MacKenzie's weekly reminder to me over the last year that I could be the first President to plunge the South African Maritime Law Association into bankruptcy!

However, I am pleased that, not only have enough of you come, but the numbers have surpassed our best expectations and we are very excited to see you all. Looking at the delegate list, we have people from all over the world. I have not attempted to work out who has travelled the furthest – China, Australia and Canada seem to be good bets – but for those of you who have come from distant lands, welcome and thank you for making the effort to be here. In particular, we are thrilled to see such a large Nigerian contingent, which lends itself to the "Africaness" of this gathering. I understand that a number of the Nigerian delegates are judges, so if anyone was thinking of seeking justice in Nigeria, this week is probably not a good time to do so! For those of you who are locals, thank you also for your support. I think this will be a great gathering.

As I am sure most you know, this is the first CMI gathering of its kind in South Africa. Not only is it an honour for us to host such a gathering, but it is also an acknowledgement and further confirmation of the fact that we have finally claimed and earned our place on the international maritime and legal stage.

I am particularly pleased that Cape Town is hosting the Colloquium. Whenever I contemplate a business trip to Cape Town, the prospect excites me like no other city in the world. For those of you who have visited Cape Town in the past, you will know what it is that I am speaking about. For those of you who are first time visitors to Cape Town and South Africa, I sincerely hope you will take this opportunity to explore this beautiful city, its mountain, winelands, magnificent drives and surrounds and experience it first hand for yourselves.

The Cape of Good Hope is the place where so many settlers to this country landed centuries ago and was the start of many journeys to the

interior. In addition, a small holiday resort a few miles offshore was home for 27 years to South Africa's greatest statesman and finest export, Nelson Mandela. It was in Cape Town that he was released from prison in 1990 and our country began its re-birthing process and its own journey to freedom. In the context of the conference theme, the Cape coast has seen some huge maritime dramas over the centuries, challenged the lives of those who sail the seas and ships have frequently sought refuge along these shores. Apart from the fact that this is a wonderful place to visit, I cannot think of a more appropriate place for the 2006 CMI Colloquium than Cape Town.

As you know, the theme for the conference relates largely to safety of life, places of refuge and associated topics. The program has been well constructed and we can look forward to many speakers who are both well known to CMI members and who are experts in their fields. We are also particularly privileged to have Mr. Douglas Shaw QC, the father of the South African Admiralty Jurisdiction Regulation Act, perhaps one of the most admired pieces of jurisdictional legislation in the world.

You would have experienced in the lead up to this conference a very professional process, plenty of relevant information and impeccable organization. This has culminated in a seamless registration process locally, a wonderful venue, an excellent opening function yesterday evening and a Colloquium well worth attending. In this context, it seems appropriate to thank a number of people who have contributed to the success of this Colloquium. In particular, I would like to thank and acknowledge:

The local organizing committee of the CMI, including John Hare whose vision brought this Colloquium to South Africa, Michael Tucker, Anisa Govender, Jenny McIntosh and particularly our long-suffering and over-burdened secretary, James MacKenzie. Having said this, none of this would have been possible without the tireless input and outstanding organizational abilities of Keith Burton, Kristen Tremeer and their team at African Agenda.

It would also be remiss of me if I did not thank my own MLA EXCO members for the unconditional support which they have given to this Colloquium. In addition, I am very grateful to all of the members of the South African MLA who have unhesitatingly put their support behind the EXCO. As with any major conference, there was inevitably some financial risk associated with hosting this one. Adopting a good robust risk management style, our EXCO doubled the 2005 membership subscription fees in order to ensure that we had sufficient cash flow for the Colloquium. There were absolutely no complaints from members about the rate hike (at least none to our face) and some of the members even paid! In short, the membership has supported us totally in this venture for which I am very grateful.

I must also mention the generous sponsorships of this conference. You will have seen the sponsors' names advertised, but I would particularly like to mention them by name:

- Webber Wentzel Bowens
- Shepstone & Wylie
- Bowman Gilfillan Findlay & Tait
- Holman Fenwick & Willan

– Safmarine
– Mallinicks
– Garlicke & Bousfield
– Smit Marine South Africa
– Fairbridge Ardene & Lawton Inc.

The final thanks of course must go to you, the delegates, who have committed yourselves to a long trip and time away from home. I know how tough a holiday/conference in Africa can be and have no doubt that it was something of a sacrifice, particularly for those of you from the northern hemisphere, having to drag yourselves away from snow, sleet and ice into the hot and arid South Africa summer! We will do our best to ensure that you are comfortable here.

I am quite sure that you have now heard more than enough from me. It is time to get this Colloquium underway and I would like to do so by taking this opportunity to introduce you to Jean-Serge Rohart, the CMI President. Jean-Serge probably does not need much introduction. His brief *curriculum vitae* is published in the programme and I do not intend to go through it. What I would like to do, however, is invite him to the podium and ask him to say a few words before we move on to our first formal paper.

I look forward to speaking to you all during the course of the next few days, wish you fruitful deliberations and I hope you take full advantage of the Fairest Cape.

Thank you.

OPENING SPEECH BY JEAN-SERGE ROHART

PRESIDENT OF THE CMI

It was a dark and stormy night. The year was 1488. It was winter, late January. Violent winds and raging seas had dragged the convoy of three ships way off course to the South. Weak with hunger and ravaged by scurvy, the crew battled against the elements, but they could no longer see the coast. After 13 days and nights of terrifying storms, it was in this very month, on 3rd February, that Bartolomeu Dias, in search of the fabled silk and spice routes to the East, first sighted the rocks around this area and landed on these very shores, which he called the Cape of Storms, soon afterwards renamed the Cape of Good Hope. The spice route to India had been found. The gateway to foreign trade was opened.

Dias did not himself go to India – his next expedition took him to Brazil, but it was he who had found the route to the East, which Vasco da Gama then pursued. Dias, da Gama, and also Columbus, Marco Polo and Vespucci had something in common : a driving passion for wealth and expansion, an appetite for discovery of the unknown, and the courage to get out and look for it. It is to these intrepid men, to their spirit of adventure, to their thirst for the freedom of the seas that we, the modern maritime community and indeed the CMI as their legal spokesmen, owe our very existence today.

Distinguished Guests,

Ladies and Gentlemen,

Mes Chers Amis,

This is the first time ever that the CMI is meeting on African territory, and it is especially appropriate that it should be here in Cape Town, some 500 years after the discovery of these shores by Bartolomeu Dias. It is indeed my great pleasure, and a special honour, to welcome you to this Colloquium whose principal theme will be Liberty and Safety at Sea.

International trade and the shipping industry have come a long way since Dias and the other great navigators of the 15th Century when trade was a "free-for-all". With the growth of shipping activities came the need for all sorts of rules with regard to the use of vessels and the carriage of goods. Maritime law was then devised mainly, if not solely, in consideration of two inseparable partners : the ship and her cargo. Both the shipowner and the owner of the goods – together with their respective insurers – formed part of an economic unit for which most of the national maritime laws have been conceived, in the spirit of what was called the "maritime adventure", namely a balance of the risks taken as between the vessel and the cargo. And those on Land had no say in the matter.

The same spirit still prevailed when the CMI was created 109 years ago

for the purpose of working towards the harmonization and unification of maritime legislation. Since then, and for the next 60 years, the CMI was the sole international organization dedicated uniquely to this goal and in fact a number of international maritime conventions still, or no longer, in use today were prepared entirely by the CMI : collision, salvage, carriage of goods by sea, limitation of shipowners' liability, arrest of ships, maritime liens and mortgages.

When we look back on how much was achieved during those years, we must acknowledge that 1897 to 1967 was the golden age of the CMI's activity.

The change came in 1967, the year when the "Torrey Canyon" sank, leaving a huge oil slick stretching from the coasts of Northern France to the South of England. This major incident suddenly revealed the need for international legislation to deal with oil pollution and with liability and compensation for damage by oil pollution. This need led the United Nations, faced with pressure by certain States, to set up the IMCO, known today as the IMO. This promptly resulted in the oil pollution conventions of 1969 and 1971, the first maritime law conventions to be enacted under the aegis of the IMO, the drafting of which was achieved with a substantial contribution from the CMI.

The primary involvement of the IMO in the creation of international maritime legislation revealed in effect that a third party had come to break up the longstanding marriage between ship and cargo, imposing itself in a "*ménage à trois*". This third party was the Land, whose threatened environment was of growing concern to national authorities. These rather recent worries have led State Authorities, be they of the flag or of the coastal States, to want a say in terms of safety at sea.

Although the IMO is now at the forefront of such issues, this does not mean that the CMI no longer has a role to play in the harmonization of international maritime law: our function has instead become two-fold.

On the one hand, since the early 1970s the CMI's contribution to the work of the Legal Committee of the IMO has been decisive, in particular in the drafting of numerous conventions such as:

- the 1974 Convention on the carriage of passengers by sea
- the 1976 Convention on limitation of liability (LLMC)
- the 1989 Convention on maritime assistance and salvage
- the 1996 Convention on HNS
- the 1999 Convention on the arrest of ships.

Indeed, as you will note, most of the programme of this Colloquium is designed to deal with topics closely connected with those presently on the Agenda of the IMO Legal Committee:

- Fair Treatment of Seafarers in the event of a maritime accident
- Places of Refuge
- Wreck Removal.

Another topic to be covered is "Issues of Transport Law" on which a Status Report will be delivered on UNCITRAL's work on the Future Instrument on Transport.

All of these signal the continued efforts by the CMI to assist the IMO and other UN agencies in striving to achieve global uniformity of international maritime and transport law.

On the other hand, however, we must not forget our own tradition and I am deeply convinced that the CMI must continue to inspire and promote its own initiatives. Amongst these, and included in the programme for this Colloquium, are for example:

- Marine Insurance
- the newly launched International Working Group whose task is to draft some guidelines on the procedural rules of various nations which might be harmonized for the purpose of applying the Limitation Conventions (LLMC and possibly also the CLC and HNS). This will be the main topic for our next conference in Athens in 2008.

Once more it is our job, the task of the CMI, to call upon the experience of the national Maritime Law Associations and of all those present here, so that we can work together to improve the lot of our seafarers in terms of liberty, whilst at the same time striving to make navigation safer. It is not an easy task, but it is an exciting one.

This Colloquium, which I now declare open, will, I hope, be a great success.

Je souhaite à tous une bonne besogne.

B. PLACES OF REFUGE

PREPARATORY MATERIAL

CAPE TOWN COLLOQUIUM

SUBSEQUENT ACTION

PREPARATORY MATERIAL

In preparation of the discussion of this subject at the Cape Town Colloquium in February 2006 the Chairman of the International Sub-Committee, Mr. Stuart Hetherington, addressed the letter reproduced below to the CMI National Associations. This letter, together with its attachments, was circulated to the National Associations by the President of the CMI with his letter of 1 August 2005, which is also reproduced below.

To the Presidents of all National Associations

Dear President,

Places of Refuge

I enclose copy of a letter of Mr. Stuart Hetherington together with a document prepared by the International Working Group which will be discussed at the Cape Town Colloquium.

Any suggested amendments to the attached framework document which your Association would like to have debated in Cape Town may be sent to the CMI Secretariat (admini@cmi-imc.org) with a copy to Mr. Stuart Hetherington (swh@withnellhetherington.com.au) before the end of January 2006.

Yours sincerely,

JEAN-SERGE ROHART
PRESIDENT

1st August 2005

Dear President,

Places of Refuge

At the Executive Council Meeting in Paris in April, it was resolved to proceed with the work on Places of Refuge. To that end the International Working Group has prepared a framework document for discussion at the Colloquium to be held in Cape Town from 12-15 February 2006. (The Tuesday morning session will be devoted to this topic.)

It is intended, by the framework document, to encapsulate the essential ingredients of such an instrument, namely:

1) The recognition of the general principle of customary international law that a coastal State has an obligation to offer shelter to a ship in distress. This principle must however be reviewed in the light of the following contemporary developments:
   a) The advent of the helicopter, which makes it possible to rescue the crew of such a vessel quickly and relatively safely;
   b) Increased preoccupation of coastal States with the protection of their marine environment;
   c) The evolving framework of liability conventions on oil, HNS, bunkers and wreck removal.

2) The creation of a presumption that a State which refuses access to a place of refuge must discharge the burden of proving that its action was reasonable.

3) The creation of an immunity from suit by third parties (or indeed from the owner of the ship and its cargo) conferred on a coastal State which admits a ship to a place of refuge in its waters.

4) The recognition of the IMO Guidelines (annexed to Resolution 949(23)) not only for action of coastal states but also for action by masters of distressed ships and salvors:
   a) as the norms for deciding whether conduct was or was not reasonable;
   b) possibly introducing some mandatory force to such guidelines, whilst recognising that this would not be popular with governments or coastal States. In order to overcome such reluctance, the automatic strict liability of the ship under existing liability conventions might need to be extended to, damage caused to fixed and floating objects in the place of refuge, or even to the financial losses caused to the admitting State or Port Authority, for example by the obstruction of a fairway.

5) The designation by coastal States of places on their coasts to which a distressed vessel will be directed, and possibly the requirement for such places to be publicised.

Further matters for consideration to be included within the framework document are:

(i) The legal framework for the issuance of directions by the appropriate authority and the obligation of the Master and ship owner to comply.

(ii) Whether there should be specific obligations on coastal States to provide facilities for the reception of distressed vessels, analogous to the duty to provide slop reception facilities.

(iii) Whether the scope of paragraph 9 needs to be enlarged to identify how any funds recovered pursuant to any such guarantee or letter of security should be expended and/or whether this clause can be enlarged to provide some incentive to competent authorities to grant access to a place of refuge.

It should be noted in relation to clause 4 in the attached framework document, that at the Vancouver Conference, Ms van der Velde suggested the following form of words:

> *"States are obliged to offer ships in need of a place of refuge when this is necessary and proportionate to the damage. A State shall be liable to the damages caused by all unjust refusals to offer a place of refuge."*

The purpose of the attached document is to stimulate debate in the National MLA's as to whether they think a Convention (or other instrument) is needed so that their delegation can attend the Cape Town Colloquium with a clear position on that issue and on the issues of principle raised in the attached document and this letter.

Shortly after the CMI Executive Council met in Paris in April, the IMO Legal Committee also met, and in its report, the following is recorded:

> *"The Committee noted that the subject of Places of Refuge was a very important one and needed to be kept under review. The Committee agreed that at this point in time, there was no need to draft a convention dedicated to Places of Refuge. It noted that the more urgent priority would be to implement the existing liability and compensation conventions. A more informed decision as to whether a convention was necessary might best be taken in the light of the experience acquired through their implementation. The Committee expressed its appreciation to the CMI for its efforts in carrying out this study on Places of Refuge".*

It will be appreciated that if National Associations favour the preparation and finalisation of a document along the lines of the framework document which is attached, they will need to be prepared to work with their own countries' National Maritime Safety Authority, or like organisation, to promote these ideas in the IMO Legal Committee.

Delegates who attended the Vancouver Conference will know that the International Association of Ports and Harbours, the International Salvage Union and the International Union of Marine Insurers are strongly supportive of this initiative and the International Working Group is conscious that it will need to work closely with these organisations.

I would therefore ask those within your National Association who have

an interest in this topic and are intending to attend the Cape Town Colloquium, to come well prepared to debate these issues and express a point of view on behalf of your Association.

Delegates to the Cape Town Colloquium are asked to send me any suggested amendments to the attached framework document which they would like to have debated in Cape Town at least two weeks before the Colloquium.

If I can be of any assistance in providing copies of materials which have already been produced on this topic over the last three years by the International Working Group, please do not hesitate to contact me.

STUART HETHERINGTON,
CHAIRMAN INTERNATIONAL WORKING GROUP:
PLACES OF REFUGE

DRAFT INSTRUMENT ON PLACES OF REFUGE

TABLE OF CONTENTS

1. General

(a) Introduction

Existing Conventions, which are listed in Appendix 1, do not establish a sufficiently clear framework for legal liability arising out of circumstances in which a ship in need of assistance seeks a place of refuge and is refused, or is accepted, and damage ensues.

(b) Customary International law

The principle of customary international law pursuant to which there was considered to be an absolute entitlement of a ship seeking a place of refuge to be granted a safe haven, has in recent times been eroded.

(c) IMO Resolution A949(23)

This instrument is intended to be complementary to IMO Resolution A949(23) adopted in December 2003 and seeks to establish an international code [or proper framework] of responsibilities and obligations concerning the granting or refusing of access to a place of refuge to a ship in need of assistance. It is intended that this code shall govern the actions of States, port authorities, shipowners, ship operators, salvors and others involved, where a ship seeks assistance, and recognises the importance of adhering to international Conventions relating to [the preservation of life;] the preservation of property and the environment, and seeks to balance those interests in a fair and reasonable way.

2. Definitions

For the purposes of this Instrument:

(a) "ship in need of assistance" means a ship in circumstances [apart from one requiring rescue of persons on board,] that could give rise to loss of the ship or its cargo or to its becoming an environmental or navigational hazard.

(b) "place of refuge" means a place where a ship in need of assistance can stabilise its condition and reduce the hazards to navigation, [and to protect human life] and the environment.

(c) "competent authority" means an organisation, whether owned by the State, privately owned or in public ownership which has the right to permit or refuse the entry of ships, which are in need of assistance, to a place of refuge.

(d) "relevant Convention" means those Conventions listed in Appendix 1.

(e) "limitation sum" means the amount pursuant to which a shipowner is able to limit liability under one of the International Conventions listed in Appendix 1.

(f) "ship owner" includes bareboat charterer.

3. It is intended that this Instrument shall provide guidance whenever judicial or arbitral proceedings relating to matters dealt with in this Instrument are brought.

4. States and competent authorities have a duty to permit access to a place of refuge by a ship in need of assistance, unless it can be demonstrated, objectively, on reasonable grounds, that the condition of the ship is such that it and/or its cargo is likely to cause greater damage if permission to enter a place of refuge is granted than if such a request is refused.

5. In circumstances in which a State or competent authority grants access to a place of refuge to a ship in need of assistance and damage is caused to the ship, its cargo or other third parties or their property the State or competent authority shall have no liability to such claimants unless:

(a) it is established that the State or competent authority has acted unreasonably in granting access to a place of refuge to the ship and

(b) the damage was caused by the decision to grant access to the ship.

6. In circumstances in which a State or competent authority refuses to grant access to a place of refuge to a ship in need of assistance and damage is caused to another State or a third party or their property by reason of such refusal and the State or competent authority which refused access is unable to establish that it acted reasonably in refusing such access and it is demonstrated by the other State or third party that the damage caused would have been unlikely to have been occasioned had access been granted the State or competent authority which refused access shall be liable to compensate the other State or third party for its loss and damage.

7. In circumstances in which a State or competent authority refuses to grant access to a place of refuge to a ship in need of assistance and that ship sustains further damage by reason of such refusal and the State or competent authority

which refused access is unable to establish that it acted reasonably in refusing such access and it is demonstrated by the ship owner that the damage caused would have been unlikely to have been occasioned had access been granted the State or competent authority which refused access shall be liable to compensate the ship owner for its loss and damage occasioned thereby.

8. For the purposes of ascertaining under paragraphs 5, 6 and 7 of this Instrument whether a State or competent authority has acted reasonably courts or tribunals should have regard to all the circumstances which were known (or ought to have been known) to the State or competent authority at the relevant time, having regard in particular to the enquiries which ought to have been conducted in accordance with IMO Resolution A949(23) in assessing requests made on behalf of ships for access to a place of refuge.

9. Where a State or competent authority grants access to a place of refuge to a ship in need of assistance it shall be reasonable for the State or competent authority to make such access conditional on the provision of a guarantee or letter of security by a member of the International Group of P&I Clubs or other recognised Insurer or Bank or Financial Institution, in the form of Appendix 2 to this Instrument, in an amount up to the limit of liability calculated in accordance with the relevant Convention [applicable to that ship].

10. Where a ship in need of assistance, which seeks access to a place of refuge is not otherwise required to have compulsory insurance or provide evidence of other financial security it will be reasonable for a State or competent authority to refuse access to a place of refuge by that ship where there is a reasonable prospect that damage could be sustained to property or the environment or that the ship may become a navigational hazard, if the ship does not have insurance [coverage]:

(a) that gives coverage up to any applicable limitation amount which applies to that ship in respect of:
    (i) pollution damage arising out of a spillage of oil.
    (ii) pollution damage arising out of a spillage of bunkers.
    (iii) pollution damage caused by a spillage of hazardous and noxious substances.
    (iv) wreck removal expenses.
    (v) damage by impact or explosion.
(b) that gives a direct right of action against the insurer, with no intervening "pay to be paid" condition.

11. States shall draw up plans to accommodate in the waters under their jurisdiction ships seeking assistance and such plans shall contain the necessary arrangements and procedures to take into account operational and environmental constraints to ensure that ships in distress may immediately go to a place of refuge, subject to authorisation by the State, or competent authority. Such plans shall also contain arrangements for the provision of adequate means and facilities for assistance, salvage and pollution response.

12. States shall identify appropriate places around their coasts as places of refuge.

APPENDIX 1
APPLICABLE INTERNATIONAL CONVENTIONS

The following Conventions and Protocols are considered relevant.

- United Nations Convention on the Law of the Sea (UNCLOS), in particular articles 195, 211 and 221 thereof;
- International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (the Intervention Convention), 1969, as amended;
- Protocol relating to Intervention on the High Seas in Cases of Pollution by substances other than Oil, 1973;
- International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974), as amended, in particular chapter V thereof;
- International Convention on Salvage, 1989 (the Salvage Convention);
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (the OPRC Convention);
- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
- International Convention on Maritime Search and Rescue, 1979 (SAR 1979), as amended.
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.
- Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971.
- Convention on Limitation of Liability for Maritime Claims (LLMC), 1976.
- International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969.
- International Convention on Civil Liability for Oil Pollution Damage (CLC), 1992.
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1992.
- Hazardous and Noxious Substances Convention 1996.
- Bunker Convention 2001.
- Facilitation of International Maritime Traffic 1965.
- International Regime of Maritime Ports 1923
- Convention and Statute on Freedom of Transit 1921.
- Convention on Regime of Navigable Waters of International Concern 1921.

APPENDIX 2

STANDARD LETTER OF GUARANTEE TO BE GIVEN TO PORT OR PROPER AUTHORITY IN RELATION TO A SHIP SEEKING ENTRY TO A PLACE OF REFUGE

Dear Sirs

Heading – Details of Ship, Casualty and Place of Refuge
In consideration of:

1. Your agreeing to the entry into port or other place of refuge, of the (name of ship) and;
2. Your agreeing not to arrest or detain the (name of ship) or any other ship or property in the same or associated ownership, management, possession or control;

and upon condition that:

1. Such refuge is given and;
2. The (name of ship) or any other ship or property in the same or associated ownership, management, possession or control is not arrested or detained by you:

We (name of Club/Bank/Financial Institution/Insurer) hereby undertake to pay you, within 14 days of receipt by us of your written demand, such sum or sums as may be found by the final unappealable judgment of a Court of competent jurisdiction (or name of specific Court having jurisdiction) or agreed in writing between us to be due to you from (name of Owners) the Owners {(name of Bareboat Charterers) the Bareboat Charterers] of the [name of ship] in respect of (I) the removal, destruction or marking of the wreck of the [name of vessel] and/or (ii) any pollution clean-up or pollution prevention expenses (individually and collectively "the Claims"), provided always that our liability hereunder shall be:

1. limited in any event to the total aggregate sum of US$[ ], less:

(a) Any amounts we (name of Club/Bank/Financial Institution/Insurer) have paid under any Certificate of Financial Security issued by us or on our behalf in respect of or relating to the Claims; and

(b) Any amounts paid or payable by (name of Owners) the Owners [(name of bareboat charterers) the bareboat charterers] of the (name of ship) or by us in respect of or relating to the Claims, whether paid under this Guarantee or otherwise; and

(c) Any amount equal to any limitation fund(s) constituted by us and/or (name of Owners) the Owners [(name of bareboat charterers) the bareboat charterers] of the (name of ship) in relation to the Claims in accordance with any applicable law; and

2. without prejudice to or waiver of:

(a) any rights (name of Owners) the Owners [(name of bareboat charterers) the bareboat charterers] of the (name of ship) may have to limit their liability under any applicable law or convention;

(b) any rights (including the right to limit liability) or defences which we (name of Club/Bank/Financial Institution/Insurer) may have under any applicable law or convention.

We hereby further undertake, when called upon to do so, to instruct solicitors in (name of appropriate city), to accept service of any proceedings issued on your behalf in connection with the above incident and hereby confirm that we have irrevocable instructions and authority from (name of Owners) Owners [(name of bareboat charterers), the bareboat charterers] of the (name of vessel) so to do and further to agree that any claim of each party against the other and any and all disputes between the parties arising from this incident shall be exclusively determined by a competent …… Court (or name of specific court).

This guarantee shall be governed by and construed in accordance with …….. law.

CAPE TOWN COLLOQUIUM
INTRODUCTION TO SESSIONS

BY STUART HETHERINGTON*

The panel:

1. Rosalie Balkin: "IMO and Places of Refuge." She is the Director of Legal Affairs and External Relations Division of the IMO.
2. Quintus Van Der Merwe. "A South African Perspective" Partner of Shepstone Wylie.
3. Richard Shaw: "The Draft Instrument." He is the Rapporteur of the International Working Group of CMI and a Research Fellow at the University of Southampton.
4. Eric Van Hooydonk: "EC Developments." He is Professor of Maritime and Transportation Law and International Law at the University of Antwerp as well as running a law office in Antwerp.

My role now is to remind you of the path we have travelled in the last few years.

CMI and Place of Refuge

In the overview which you have it is noted that the genesis of CMI's involvement on this topic was the assistance rendered to IMO (as a result of the "*Castor*" incident in December 2000) by responses to two questionnaires submitted to National Associations which considered what States had done in their national legislation to give effect to certain International Conventions: Salvage, UNCLOS and OPRC, and what the Civil Liabilities of States might be in circumstances in which oil pollution ensued from a failure to grant a place of refuge or to grant a place of refuge.

In summary the responses to those questionnaires indicated that a large number of States had either not ratified those Conventions or if they had they had not done anything to introduce into their laws any provisions which would add some bite to the responsibilities that they undertook in those Conventions in this area. A good example of this was the Salvage Convention 1989. Slightly less than 50% of the respondents to the questionnaire had not ratified the Convention and of those that had only three had designated Places of Refuge and none had introduced any domestic legislation to give effect to their responsibilities under Article 11, which it will be recalled exhorts States:

> *"whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-*

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* Chairman International Working Group.

operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general."

Our Rapporteur has described that Article as a "pious expression of promises to co-operate."

In addition there had been the following international developments since 2001:

1. *"Prestige*" in November 2002: Whilst I know you cannot believe all you read in the newspapers a report in the Lloyds List in late December last year noted the following:
   "A leaked tape of a conversation between two senior officials of the Spanish Maritime Administration suggests that the decision to send the crippled "Prestige" out to sea was taken without technical advice less than three hours after the ship had initially radioed for help…The conversation took place between 16:40 hours and 17:25 hours on November 13, 2002. The "Prestige" had issued a Mayday about 15:15 hours."

I make no comment about the accuracy of that report but simply note that if it is correct such behaviour would be inconsistent with the IMO Guidelines, which will be referred to later, would make it difficult for authorities behaving in that manner to justify their decision if the Draft Instrument we will discuss later, was in force, and is inconsistent with the manner in which Spanish authorities had approached such a request in a mock desktop exercise only months before the "Prestige" came onto the scene.

2. EEC Vessel Traffic Monitoring Directive of 2002. Eric Van Hooydonk will identify the significance of these and other EC developments.
3. CMI Bordeaux Colloquium, June 2003. There was some limited discussion on this topic at the Colloquium.
4. CMI International Sub-Committee, November 2003. A discussion paper was prepared for that meeting, which is available on the CMI web site.
5. The IMO Resolution of December 2003 giving effect to Guidelines for a master in need of a place of refuge and for actions expected of coastal States. Rosalie Balkin will identify the significant aspects of these Guidelines.
6. CMI Vancouver Conference, June 2004.

CMI Vancouver Conference 2004

The meeting considered the following eight issues, all of which were the subject of written papers and presentations:

1. The obligation to offer a place of refuge – Eric Van Hooydonk.
2. Penal liability – Frank Wiswall.
3. Reception facilities – Gregory Timagenis.
4. Civil liability and monetary incentives – Stuart Hetherington.

5. Designation of places of refuge, mechanism for decision making – Richard Shaw.

In his extremely well researched (and argued) paper Eric Van Hooydonk pointed out that the right according to customary international law to be granted a place of refuge has become clouded and can no longer be regarded as an absolute right. Edgar Gold, in his Foreward to "Places of Refuge for Ships" by Aldo Chircop and Olaf Linden gives examples of two occasions in which he was on ships that required a place of refuge, in one of which he was the Master and he simply notified the authorities what he was doing. No permission was ever sought and the only questions that were ever asked were whether he required assistance. Compare that with what was said by an Irish Judge, Barr J, "a modern practice of States was evolving whereby humanitarian and economic aspects of maritime distress are distinguished and that access to safe havens is frequently refused where safety of life is not involved".

There was a view expressed at the Vancouver meeting by some delegates and three significant stakeholders (ISU, IUMI and IAPH) that CMI should, with the support of IMO, seek to develop an International Convention or amendments to existing Conventions or Protocols to clarify the framework needed to balance the interests of shipowners and others interested in the safety of the ship and the potential dangers to the environment and others from a damaged vessel.

Others, however, questioned whether States would ratify a new Convention (or permit amendments to Conventions) if they impacted on their sovereignty.

There was a strong view that if any new Instrument (or amendments to existing Instruments) is to be developed questions of financial compensation and security would need to be included to make it a feasible proposition. There were uncertainties in the situation in which some of the framework Conventions await ratification (HNS and Bunker) and one is still in the gestation period (Wreck Removal). It is thought that these circumstances do not encourage States to assist vessels in distress. There was a general view that if there is a risk that States face liabilities they should be removed and any gaps in the present regimes need to be covered, so as to encourage States that they will, so far as possible, not suffer if damage ensues after a place of refuge has been granted.

There was also support for the view that the preferable approach concerning security for any potential claim is that all ships should be required to carry compulsory liability insurance and there should be direct action to avoid the problems associated with delay when negotiations take place over the amount and wording of a guarantee or letter of comfort.

Great concern was expressed by a number of delegates in relation to the treatment of masters and others which Frank Wiswall highlighted in his paper on criminalisation. Concern was expressed as to the adverse effect it has on the willingness of a ship's master and/or an owner to seek a place of refuge. This is, of course, interrelated to the issue of Fair Treatment of Seafarers, which was discussed yesterday. As our Rapporteur pointed out in Vancouver,

it is not only ships' masters who are at risk and also salvors and lawyers who may be on board in a salvage situation where States, in breach of their obligations under the United Nations Law of the Sea Convention, take action to detain and charge masters, salvors and others arising from a marine casualty or incident.

Whilst there appeared to be general agreement in Vancouver that the UK SOSREP model (Secretary of State's Representative) was an ideal, so that decision making is done by independent people (not amenable to political pressure) it was recognised that this may not suit all cultures. Similarly, it was accepted that some countries take the position that there is no problem with predesignating and publicising places of refuge whilst others prefer not to publicise in advance and treat each situation on an ad hoc basis.

Considerable interest was expressed in Gregory Timagenis' paper in Vancouver recommending a requirement that reception facilities (such as floating docks) may need to be located, at least near busy seaways, which may be funded on a regional basis. Delegates however expressed concerns about the practicality of this suggestion and remarked on the problems of docking laden vessels, the unpredictability of where their services might be needed, and the cost of providing such facilities.

Post Vancouver

The Working Group prepared a report arising from the Vancouver meeting, together with a Supplementary Report, which were submitted to the Legal Committee of the IMO. The latter Report contained an analysis of the existing Conventions which contain powers of State intervention, liability regimes and compensation provisions. It also analysed what is meant by "preventative measures" in some of the Conventions referred to. The analysis of the Conventions showed that when powers are conferred on States to intervene they are expected to act reasonably and proportionately. Similarly where preventative measures are taken States are expected to have acted "reasonably" and they are assessed on objective criteria by organisations such as the IOPC Fund.

The IMO Legal Committee met in April 2005 and I will leave Rosalie to tell you what happened there.

Notwithstanding Douglas Shaw's comments in his key note address as to the fate of those who aspire to prepare legislation you have before you a "Draft Instrument" which we are looking to you to give us feedback on in the second session after morning tea. Richard Shaw will take you through that briefly after Rosalie Balkin and Quintus Van Der Merwe have made their presentations. Thereafter Eric will compare what we have done with the EU's work. After morning tea the floor will be open for you to express your views.

THE IMO POSITION WITH RESPECT TO PLACES OF REFUGE

SPEAKING NOTES BY DR. ROSALIE P. BALKIN*

History

The subject of places of refuge first surfaced in IMO in discussions of the Legal Committee concerning the 1989 Salvage Convention. Even then the subject was controversial. The suggestion that there should be a clearly spelt-out obligation for States to admit vessels in distress into their ports was not carried. Instead, the Legal Committee approved, as a compromise, the current text of article 11 of the Salvage Convention which provides, rather more vaguely, that:

> "whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provisions of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general."

Prior to the Guidelines being adopted, article 11 of the Salvage Convention was the only provision in any IMO instrument directly relevant to the subject of places of refuge.

The incident precipitating the adoption of the Guidelines concerned the fully laden tanker *Castor* which, in 2002, developed a severe structural problem while en route from Constanta, Romania to Lagos, Nigeria and was forced to remain under tow in open seas and heavy weather for more than a month while salvors tried to find a safe place so that lightering operations could be carried out. This incident, along with others involving ships in need of emergency assistance, prompted the Maritime Safety Committee and the Marine Environment Protection Committee of IMO to consider the matter.

The Legal Committee became involved in the debate in response to a request by the Maritime Safety Committee that the subject of places of refuge be brought to its attention "for it to consider it, if it so decides, from the international law, jurisdiction, rights of coastal States, liability, insurance, bonds, etc. points of view".

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* Director, Legal Affairs and External Relations Division International Maritime Organization (The view expressed in these Notes are those of the author and do not necessarily represent those of the Organization).

Consideration of the issue by the IMO Committees

The role of the Legal Committee was to consider the extent to which provisions of international law either place an obligation on or facilitate the development of rules requiring coastal States to provide a place where a ship can be taken when it is disabled, damaged or otherwise in distress and is posing a serious risk of pollution in order to remove the ship from the threat of danger, and undertake repairs or otherwise deal with the emergency situation.

To assist the Committee in these deliberations, the Secretariat prepared a background paper in which it identified certain matters that would need to be addressed. These included the question of sovereignty, force majeure – distress, the duty to render assistance, the right of the coastal State to protect its coastline from pollution hazards and the question of compensation.

In that paper, the Secretariat expressed the view that it had identified no legal barrier to the development by the Organization of guidelines on the subject of places of refuge. The challenge was to find the proper balance between the duty of States to render assistance to ships in distress and the right of States to regulate entry into their ports and to protect their coastlines from pollution or the threat of pollution.

The Legal Committee strongly supported the development of guidelines on places of refuge. Despite the absence of a specific reference to the notion of places of refuge in UNCLOS, it was agreed that there was no obstacle in international law to their development providing, in so doing, the principles of international law, including those relating to the balance of interest between the ship in distress and the coastal State, were respected.

Debate in the Legal Committee from that time on focussed on the specific issue of liability and compensation arising from a decision by the coastal State whether or not to grant a ship in distress a place of refuge and it was at this point in the debate that the CMI became actively involved.

As has been the case in other subjects considered by the Legal Committee over the years, the research undertaken by the CMI proved to be of invaluable assistance to the Committee in its deliberations. This was so even though the Committee ultimately did not agree with CMI's view on the need to develop a new convention on the subject of liability and compensation in relation to places of refuge.

The detailed submissions put to the Committee by the CMI over many sessions helped to ensure that all members of the Committee were fully aware of the various ramifications of the problem. There were two main CMI documents. The first reported on discussions at the 38th CMI Conference in Vancouver (June 2004) while the latter provided an analysis of existing international law instruments on liability and compensation and their possible application to places of refuge.

These forcefully expressed CMI's views that the present international regime is confused and unsatisfactory and that, while many of the provisions require States to act reasonably (for example the Intervention Convention) when confronted by potential pollution threats, nonetheless they do not

contain clear guidelines identifying the duties and obligations that shipowners, States and others who may be involved are under when making a request for a place of refuge or when receiving such a request. Consequently, they do not sufficiently encourage States to grant places of refuge to distressed vessels.

The Committee was also fully apprized of CMI's views as to the deficiencies in coverage contained in the four principal international conventions dealing with liability arising from pollution damage (the 1969 Civil Liability Convention and its Protocols, the 1992 Fund Convention, the 1996 Hazardous and Noxious Substances Convention and the Bunkers Convention).

Despite these arguments, the Committee decided that, at least at present, there was no need to recommend the development of a new convention since the existing liability and compensation regime worked reasonably well. And once the HNS and the Bunkers Conventions enter into force, the regime would work even better. In general, therefore, the view of the Legal Committee has been that, while there might be gaps in the coverage of the liability and compensation provisions of various conventions, these gaps are due in large measure to the lack of participation by the international community in the existing treaty regime. Consequently, the best way to fill the gaps is not by the creation of a new convention or by amending existing conventions but by ratifying and implementing the various liability and compensation conventions that already existed.

In a nutshell, the Committee has preferred to adopt a wait and see approach and to encourage a greater participation in the existing conventional regime rather than recommend the adoption of a new legal regime specifically on the subject of places of refuge. Consequently, while the Committee is certainly keeping a watching brief on the subject of places of refuge, it is fair to say that at the present time no further action is planned.

The Guidelines on places of refuge

Concurrently with the consideration in the Legal Committee, the Guidelines themselves, together with an associated draft Assembly resolution as well as a draft Assembly resolution on the Establishment of Maritime Assistance Services, were being prepared by the Sub-Committee on Safety of Navigation pursuant to a request from the Maritime Safety Committee. The final version of the Guidelines, as reflected in Assembly resolution A.949(23) adopted on 5 December 2003, reflects the specific comments of the Legal Committee and also those of the MSC, COMSAR 7 and the MEPC, since those Committees have also had a major interest in their development.

In developing the Guidelines, the NAV Sub-Committee was instructed to take into account:

1. actions the master of the ship should take when in need of a place of refuge (including actions on board and actions required in seeking assistance from other ships in the vicinity, salvage operators, flag State and coastal States);

2. the evaluation of risks associated with the provision of places of refuge and relevant operations in both a general and a case by case basis; and
3. actions expected of coastal States for the identification, designation and provision of such suitable places together with any relevant facilities.

Under the sub-heading "Objectives of providing a place of refuge", the Guidelines make it clear that they are to be applied in instances when a ship is in need of assistance but safety of life is not involved. Should safety of life be involved, then the provisions of the SAR Convention must be followed.

The Guidelines also recognize that any decision to grant access to a place of refuge may well involve a political decision which can be taken only on a case by case basis with due consideration given to balancing the advantage for the affected ship and the environment resulting from bringing the ship into a place of refuge against the risk to the environment resulting from that ship being near the coast. This reflects the advice given by the Legal Committee.

Under the sub-heading "Background", the Guidelines refer to a list of conventions contained in an attached appendix, which supply the broad legal context within which States and ships will act in the envisaged circumstances. Apart from UNCLOS and the London Convention, all the other conventions listed are those adopted by IMO. They include the Civil Liability/Fund Conventions but, at the moment, the list does not include any reference to the HNS Convention or the Bunkers Convention. This is due to the fact that these Conventions have not yet entered into force. Once they do then the list will have to be revisited and amended accordingly. Similarly, once the Wreck Removal Convention is adopted and enters into force, it, too, may play a relevant part. So this needs to be kept under review.

Under the sub-heading "Purpose of the Guidelines", the point is made that the Guidelines do not address the issue of liability and compensation for damage resulting from a decision to grant or deny a ship a place of refuge. This clause was inserted at the request of the Legal Committee and simply states the facts of the matter. Nonetheless, as just mentioned, the Guidelines and the appendix do refer to the Civil Liability and Fund regime and clearly these Conventions cannot be ignored by coastal States in assessing the risk to their coastlines arising out of any particular incident.

Part 2 of the Guidelines addresses the action required of masters and/or salvors of ships in need of a place of refuge. In this connection the Guidelines provide a step by step approach in the event of an incident.

Part 3 of the Guidelines addresses the action expected of coastal States. It begins by pointing out that, under international law, a coastal State may require a ship's master or company to take appropriate action within a prescribed time with a view to halting a threat of danger; or in cases of failure or urgency, the coastal State itself may be able to exercise its authority and take appropriate responsive action. Because of this, it is important that coastal States establish procedures in advance of any incident occurring and the Guidelines recommend, in particular, the establishment of a Marine Assistance Service

(MAS)*. Hence, in parallel with these Guidelines, IMO also developed and adopted Assembly resolution A.950(23) on Maritime Assistance Services (MAS), which, *inter alia*, invites Governments of coastal States that have established a MAS to forward to IMO the details of their MAS to enable IMO to circulate such particulars, so that shipmasters and other persons or organizations concerned can contact it as necessary. To date, a total of only seven States have provided such information which has been circulated by MSC.5 circulars.

With respect to the legal position, the Guidelines point out that, when permission to access a place of refuge is requested, there is no obligation for the Coastal State to grant it, nevertheless the coastal State should, after weighing all the factors and risks in a balanced manner, give shelter wherever reasonably possible.

While the Guidelines do not address specifically the question of liability and compensation, nevertheless they do state that, as a general rule, if the place of refuge is a port, a security in favour of the port will be required to guarantee payment of all expenses which may be incurred in connection with its operations, such as measures to safeguard the operation, port dues, pilotage, towage, mooring operations and sundry miscellaneous expenses.

Appendix 2 of the Guidelines provides pointers for the evaluation of risks associated with the provision of places of refuge from a practical perspective.

Current position and possible future action

Following the adoption of the Guidelines by the IMO Assembly in December 2003, none of the IMO Committees involved in their development have undertaken any further specific action. At the moment, the three Committees are keeping the Guidelines under review in a general way. This stems from the view that the Organization has played its part in the development and adoption of the Guidelines and, figuratively speaking, the ball is now in the court of Member States, since only they can ensure that the Guidelines are in fact implemented.

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* Unless neighbouring States make the necessary arrangements to establish a joint service.

In this connection, I am not aware of any specific feedback that the Organization has received on the subject of implementation. An EU Directive (Directive 2002/59/EC, dated 27 June 2002), establishing a community vessel traffic monitoring and information system, does point out (at paragraph 16 of the Preamble) that non-availability of a place of refuge may have serious consequences in the event of an accident at sea and requires Member States to draw up plans whereby ships in distress may, if the situation so requires, be given refuge in their ports or any other sheltered area where necessary and feasible. Article 20 of the Directive (headed Places of Refuge) specifically requires Member States, in drawing up such plans, to take into account relevant Guidelines by IMO on places of refuge, with the aim of ensuring that ships in distress may immediately go to a place of refuge subject to authorization by the competent authority.
I understand that Mr. Hooydonk will discuss the details of the Directive as well as the so-called "Erika III package", which is in the pipeline.

Two years on and speaking from IMO's perspective, it is perhaps still premature to consider the need for a global convention which, unlike the Guidelines, would be binding in nature. It is also probably premature to consider their amendment.

REPORT OF SESSION ON PLACES OF REFUGE

BY RICHARD SHAW

The subject of Places of Refuge was selected as a major topic for study at the CMI Colloquium held in Cape Town South Africa on 12-15th February 2006. The background to this discussion was the divergent decisions of the IMO Legal Committee and the CMI Executive Council, the former having decided in April 2005 that there was no need to draft a convention on this subject at that time, whereas the latter accepted the advice of its International Sub Committee, chaired by Stuart Hetherington of Australia, that further work on a draft convention was justified due to the unsatisfactory state of the law. The discussion during the Cape Town Colloquium reflected these two points of view, and at the conclusion of the Colloquium it was recognised that no satisfactory resolution of these views was in sight. It was agreed, however, that work by CMI on this subject should not be stopped.

Presentations to the Colloquium

Synopses of these presentations by all the speakers will be found on the CMI/Conferences websites.

The first session on Tuesday 14th February, was opened by Stuart Hetherington, Chairman of the ISC, who set the scene. Dr Rosalie Balkin, Director Legal Affairs and External Relations of the IMO, then reported on the development of this topic by the IMO Legal Committee, from its first appearance in Art 11 of the 1989 Salvage Convention. Both these speakers emphasised the effects internationally of the CASTOR (2000) and PRESTIGE (2002) casualties and the valuable contribution made by the CMI to the discussions in the Legal Committee and its two reports (LEG 85/10/3 dated Oct 2002 and LEG 89/7 dated Oct 2004)

Quintus van der Merwe (South Africa) delivered an interesting paper on the South African perspective on the Places of Refuge, including the practices of SAMSA as applied in a number of recent casualties. IMO Resolution 949(3) adopting the IMO Guidelines in Places of Refuge has been adopted as the basis for the drafting of the South African National Contingency Plan.

Richard Shaw (Rapporteur of the ISC) then introduced the draft instrument prepared by the ISC. He drew attention to Article 4, which created a presumption of a right of access to a place of refuge by a vessel in distress, rebuttable by the coastal state if it had reasonable grounds for refusal. Article 8 expressly incorporates the IMO Guidelines on Places of Refuge, as the yardstick by which reasonable grounds should be judged. He emphasised that the IMO Guidelines already represented an internationally recognised

standard in this field, and as such should already be applied to any circumstances giving rise to legal claims following a distressed vessel's admission to or exclusion from a place of refuge.

Dr Eric van Hooydonk (Belgium) then reported on the latest developments in the EU in the field of places of refuge, notably the "ERICA III package" published in November 2005, which were produced by the Mare Committee of the European Parliament in consultation with EMSA. These proposals give a *relative* right of access, compared with the CMI's *presumed* right of access, and take into account the IMO Guidelines. The EU's proposals, and the apparent determination of the European Commission to bring them into force probably in about 2-3 years time, prove that the European Commission considers that there is a real need for an international instrument on places of refuge, to which the CMI Draft Instrument has clear added value.

Open Debate

Gregory Timagenis (Greece), member of ISC, spoke in favour of the CMI proposal, and urged the CMI to continue its work.

Archie Bishop (ISU) also favoured this. He reminded the audience that the CASTOR was refused entry by 6 governments, although the Appeal Arbitrator appointed by Lloyds eventually decided that there was no substantial risk of danger to the environment posed by this vessel. This reinforced the need for an objective appraisal of the ship's condition before any vessel is turned away. The salvors would welcome the clarification produced by the CMI Draft. Prevention, he said, is better than cure.

Jan de Boer (Nld), on the other hand, repeated the arguments adopted by the IMO Legal Committee, that the existing instruments (CLC, HNS, Bunkers and Wreck Removal) should be allowed to be brought into force and to show how they worked before the CMI embarked on a new instrument.

Likewise Karl Gombrii (Norway) stated that the Norwegian MLA had taken the view that the CMI does not have the right to decide if there is a real need for such a convention. The existing regime may not be ideal; there may be gaps, but it is not worth pressing forward at this time.

Rene Bos (IAPH) introduced the position paper put in by his organisation. It welcomes the work done by CMI, but recommends that further work on a draft convention should be postponed pending the implementation of the other liability conventions.

Jose Maria Alcantara (Spain) emphasised that it was best to prevent accidents and pollution, and that these provisions in the draft were the most important. The provisions relating to guarantees were important but not essential.

Alberto Cappagli (Argentina) stated that the Government of Argentina would not accept a convention on the lines of the CMI Draft. There were sufficient provisions in the Argentine Civil Code to give a right to compensation for unreasonable refusal of access to a place of refuge. The burden of proof should remain with the claimant.

Giorgio Berlingieri (Italy) put in a working paper of the Italian MLA which was circulated to delegates recommending that a. the choice of the appropriate maritime authority with power to decide whether or not to admit a distressed vessel to a place of refuge in its waters should be left to the state concerned; b. the pre-designation of places of refuge should not be publicised; c. guidelines were preferable to a convention and d. it would be useful if maritime States would promptly report to IMO any occurrence that took place in their waters, the measures adopted and their result.

Hugh Hurst (Int. Group of P and I Clubs) reported the view of the International Group that there is no compelling need for a new convention. The great majority of potential liabilities are covered by CLC, HNS, Bunkers and Wreck Removal Conventions. The International Group has put in place a standard form of letter of guarantee pending adoption and entry into force of the existing conventions. The Group, he reported, prefers global solutions to those proposed by the EU.

Rob Wallis (UK) stated that following consultation with a broad range of insurance and other shipping interests, his association would like to support the ISC proposal.

Donald Chard (Chamber of Shipping) stated that while an instrument requiring states to grant admission would be welcome, his organisation did not consider that there was support internationally for this, and that it would be better to encourage the ratification of existing instruments.

William Moreira (Canada) stated that his association favoured the affirmation of the right of a ship to seek access to a place of refuge, but was concerned at any effort to impose liabilities on coastal states. The CMLA favoured ratification of existing instruments as a first priority, but agreed also that the CMI should continue its work.

The Nigerian MLA considered that the draft instrument required more work and supported the position of the IAPH.

Michael Marks-Cohen (US MLA) stated that the CMI should press on with this project. It should also seriously consider the possibility of adding the instrument as a new chapter of SOLAS.

Fritz Stabinger (IUMI) reported that IUMI, which is concerned with property at sea, supported the CMI activity to help property at sea, and will participate in this work. We cannot, he said, afford to hide behind the ratification of existing conventions. We cannot afford another CASTOR or PRESTIGE.

The representative of China MLA stated that the Chinese government does not have a clear understanding of the financial security aspects. The question of access to a place of refuge is essentially public law. Can we separate the financial compensation matters from the public law issues?

Ben Browne (BMLA) spoke in favour of the draft new convention, which would, he said, be a balancing force. There were five reasons, he said, why liability and compensation provisions were important:

1. The duty to allow access was qualified, based on reasonable balanced assessment.
2. Where more than one coastal state was threatened by a casualty, the convention would make clear which state had a duty to admit the ship.

3. It would specify the consequences of any breach.
4. It would specify liability and compensation in states which had not ratified the HNS and Bunkers conventions.
5. It would clarify the position of 'leper' ships, and the action to be taken when the Dumping Convention prevents a salvor from sinking a vessel offshore.

Måns Jacobsson (IOPC Funds)

1. It is not realistic to aim for a convention on Places of Refuge at this stage. There are too many difficulties.
2. The proposed liability provisions will not contribute significant clarification, especially where the provisions of the draft convention may conflict with other conventions.
3. He was not convinced that the CMI Draft is the right place for financial provisions.

In his report to the CMI Assembly on 15th February, the Chairman of the ISC, Stuart Hetherington (Australia) stated there were five stakeholders in the issue of Places of Refuge, namely

a. shipowners
b. port authorities
c. salvors
d. property owners
e. the general public

The shipowners and port authorities had, perhaps surprisingly, expressed themselves to be happy with the position taken by the IMO Legal Committee, that we should do nothing more until the existing liability conventions had been ratified and implemented. On the other hand, the salvors and property owners were clearly in favour of the convention. The general public's view had not been expressed.

What should the CMI do? Perhaps the best solution was to continue work on the draft instrument, despite the lack of support internationally, so that it was ready to be picked off the shelf if a major casualty should concentrated the minds of the world's legislators on the need for such a convention.

REPORT

BY STUART HETHERINGTON*

In the opening session yesterday we heard from Dr Rosalie Balkin that the IMO has put this topic on the back-burner and the International Community is taking a "wait and see" attitude – in the apparent hope that its Guidelines and the coming into force of what they regard as the pillars of this area of the law, namely all the Conventions such as CLC, Fund, HNS, Bunkers and Wreck.

We then heard from Quintus Van Der Merwe on what South Africa has done in compliance with the IMO Guidelines and that it has also given effect to the Fund Convention.

His paper was not only educational but entertaining and a stark reminder that accidents do happen with great regularity.

Richard Shaw identified the essential features of our framework instrument and urged delegates to look at the big picture and accept the necessity for the existence of such an Instrument. I am reminded that Nicholas Gaskell, one of his colleagues at Southampton University, said the same thing at the time when the Salvage Convention was entered into, with respect to Article 11.

Eric Van Hooydonk, in another very pertinent presentation, reminded us that whilst IMO has gone to sleep, the Europeans have not and it is likely that a regime, not unlike that which our Instrument proposes, may come into existence in Europe. This is a matter of concern for CMI, in view of its raison d'etre – to see uniformity in International Maritime Law.

I now come to the second session. In a former life I had a partner in another law firm who was frequently heard to muse how much easier the practice of the law would be without clients. In "Places of Refuge" our "clients," if we can use that term, are the stakeholders in this issue. They include:

1. Shipowners.
2. Port authorities/Maritime authorities.
3. Salvors.
4. Property owners and their insurers affected by a crippled ship, whether cargo or other property.
5. The general public, both in existence today and in the future.

We heard from some of those stakeholders yesterday. Both the Chamber of Shipping and the P&I Clubs representing shipowners, and the IAPH,

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* Chairman International Working Group.

representing port authorities, do not see any future in our work. They are supported by some National Associations.

My response to those interventions reminded me of a recurring joke in the John Cleese film "A Fish called Wanda," where one character is frequently heard to say "disappointed."

This is particularly so when I, personally, think that the work we have been doing and the Draft Instrument is designed to assist shipowners and provide encouragement to States and Authorities to act "reasonably" and responsibly. That is not something which any other Instrument does, in my view, with sufficient clarity.

We also heard from a significant stakeholder, the ISU, in the form of Archie Bishop, as well as IUMI, and some delegates that there is a great need for some such Instrument.

In terms of the listed stakeholders therefore, there are two in favour and two against the Draft Instrument.

I am also mindful that there were many statements from the floor which were widely acclaimed by delegates. The silent majority I ask rhetorically? Perhaps they are more conscious of the wider picture and represent the general public.

What is CMI to do? The choice is stark. Firstly, we could drop the project so that it can be picked up when there is another public clamour after the next incident, which will happen, unless of course we stop shipping oil and other HNS cargoes around the world as Kim Jefferies suggested on Monday, or the EU initiatives cause the International community to realise that our work is worthwhile and necessary.

Secondly, CMI could complete the project so that there is a workable text to be picked off the shelf at such a time and, possibly as Michael Marks Cohen suggested, be incorporated as an annex to SOLAS.

SUBSEQUENT ACTION REPORT ON PLACES OF REFUGE SUBMITTED BY COMITÉ MARITIME INTERNATIONAL TO THE IMO LEGAL COMMITTEE*

Executive Summary

At the meeting of the Legal Committee at its 90th session in April 2005 the Committee noted that the subject of places of refuge was a very important one and needed to be kept under review. The Committee agreed that at this point in time, there was no need to draft a Convention dedicated to places of refuge. It noted that the more urgent priority would be to implement all the existing liability and compensation Conventions. A more informed decision as to whether a Convention was necessary might best be taken in the light of the experience acquired through their implementation.

Related Documents: LEG 90/8

Action to be taken:

Delegates are invited to take note of the contents of this paper.

Report

In preparation for its Colloquium at Cape Town in February 2006 the International Working Group of CMI prepared a Draft Instrument for discussion by delegates, a copy of which is attached to this report, excluding its Appendices.**

Whilst the CMI recognises the views expressed by the IMO Legal Committee at its meetings in April 2005 and understands that there is no immediate support for a new instrument, the views of the International Working Group and the CMI Executive Council are that: there remains a probability that ultimately there will be a need for such a Convention; it is a worthwhile exercise to complete the work which has been commenced; and it has noted the further work being done by the E.U. in this area, which could create a lack of uniformity in International law.

The Draft Instrument has sought to recognise the concurrent rights of States and vessels which are in distress and produce a regime which is consistent with the international obligations States are currently under where they have ratified UNCLOS and other Conventions which touch on this topic.

The principal objectives of the Draft Instrument are:

– To emphasise the position under customary International law of a presumption to a right of access to a place of refuge for a vessel in distress

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* This Report was sent on 24 March 2006 by the Secretary General of the CMI to Dr. Rosalie Balkin, Director, Legal Affairs and External Relations Division IMO.

** The Draft Instrument with its two Appendices is attached to the letter of the Chairman of the CMI International Working Group to the President of the CMI, supra, p. 144.

- To make the presumption rebuttable by the coastal State if it can show that it was reasonable to refuse access (Article 4).
- To give immunity from suit to a State which grants access to a place of refuge to a vessel in distress (Article 5).
- To give more force to the IMO Guidelines (Article 8), which CMI recognises as playing a significant role in assisting to define the ambit of "reasonableness", when considering the behaviour of both ship owners (and their masters) and States (and port authorities).
- To clarify the position regarding the issue of letters of guarantee to secure claims of a port or coastal State, which grants access to a ship in distress (Article 9).
- To require coastal States to designate places of refuge in advance, although not necessarily to publicise them (Article 12).

The Draft Instrument received the enthusiastic support of a number of delegates at the CMI Colloquium, as well as significant stakeholders, such as the International Salvage Union (ISU) and the International Union of Marine Insurance (IUMI). Representatives of ship owners and port authorities however, and some delegates, repeated the views previously adopted at the IMO Legal Committee in April 2005, to the effect that a wait and see approach is desirable.

As part of its ongoing work in this area the International Working Group intends to conclude work on the Draft Instrument so that it is available for future use, and to explore what steps can be taken through the National Associations of the CMI to expedite the implementation of the liability conventions (CLC, Fund, HNS, Bunker and ultimately Wreck), as well as whether any adaptations to the law and practice of salvage could provide greater incentives to States to assist vessels in distress.

STUART HETHERINGTON
Chairman CMI International Working Group on Places of Refuge

C. FAIR TREATMENT OF SEAFARERS

THE WORK OF THE JOINT IMO/ILO *AD HOC* EXPERT WORKING GROUP

SPEAKING NOTES BY DR. ROSALIE P. BALKIN*

Introduction

My task this morning is to bring you up to date with developments at IMO. Although, as Douglas Shaw mentioned in his introduction, the question of the fair treatment of seafarers following maritime accidents is not a new issue, it was first brought to the IMO Legal Committee only relatively lately, at its eighty-eighth session in October 2004, following the *Tasman Spirit* and the *M/V Prestige* incidents. Given the respective mandates of the ILO and IMO with respect to the welfare of seafarers, and the complexity of the problem, the Legal Committee decided that the matter should be advanced through a joint IMO/ILO *Ad Hoc* Expert Working Group comprising of the ILO social partners (essentially seafarers and shipowners) as well as eight Member States of IMO (China, Egypt, Greece, Algeria, Panama, Philippines, Turkey and United States). Meetings of the Joint Working Group have, however, been open to all other IMO Members and observer delegations.

The Legal Committee agreed terms of reference for the Joint Working Group, the crux being that the Group should prepare suitable recommendations for consideration by the IMO Legal Committee and the ILO Governing Body, including draft guidelines on the fair treatment of seafarers in the event of a maritime accident. The terms of reference also required that, in preparing the draft guidelines, the Joint Group should take into account relevant international instruments including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which are the three main international human rights treaties, as well as UNCLOS and pertinent IMO and ILO instruments, including MARPOL 73/78 and the ILO Declaration on Fundamental Principles and Rights at Work and other internationally recognized standards and guidelines on settlement of disputes.

These arrangements were approved by the ILO Governing Body at its 290th session and also received the blessing of the IMO Council at its ninety-second session.

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* Director, Legal Affairs and External Relations Division International Maritime Organization (The views expressed in these Notes are those of the author and do not necessarily represent those of the Organization).

The first session of the Joint Working Group took place at IMO Headquarters from 17 to 19 January 2005. The Group agreed that the guidelines were necessary because, while there were some international instruments which highlighted some of the problems related to the question of fair treatment of seafarers, none of them addressed the issue in a comprehensive way. The Group made a valiant attempt to draft the guidelines but, due to lack of time, it was unable to complete the task. Instead, it prepared a draft resolution to be sent through the Legal Committee to the IMO Assembly and the ILO Governing Body.

The resolution, adopted by the IMO Assembly (November 2005) as resolution A.987(24), *inter alia* stresses the need for urgency and to this end requests the Group to finalize its work expeditiously. In this connection, it also authorized the Legal Committee and the ILO Governing Body to promulgate the guidelines immediately following their adoption rather than waiting for the next session of the IMO Assembly which is only due to take place in November 2007. Pending the adoption of the guidelines, the resolution urged States to respect the human rights of seafarers involved in maritime accidents, to expeditiously investigate such accidents and to adopt procedures to allow the prompt repatriation or re-embarkation of seafarers caught up in such situations.

The resolution further invited Member Governments and NGOs to start recording incidences of unfair treatment of seafarers following maritime accidents and to provide this information either to ILO or to IMO. Collection and collation of this information is in line with IMO practices in other areas and will be used to provide both Organizations with an accurate perspective of the ongoing scale of the problem. No formal database has yet been proposed.

One of the issues that had come up at the first session of the Joint Working Group was whether the Group's terms of reference were too narrow in referring only to maritime "accidents" and whether they should be expanded to include, *inter alia*, "incidents". This issue was debated at LEG 90 with several delegations making the point that there were many situations and scenarios, apart from mere accidents, where the fair treatment of seafarers could be compromised and, in their view, the guidelines should cover those situations as well. But this was really a minority view. Most delegations were of the opinion that the terms of reference were broad enough and needed no modification. The clinching argument was essentially pragmatic – any amendments to the terms of reference would have to be approved not only by the Legal Committee but also by the ILO Governing Body and, if they were to be introduced, the preparation of the urgently needed guidelines would be further delayed. So, in the end, the Committee agreed that the terms of reference should remain unchanged.

The current situation

The second session of the Joint Working Group is due to take place at IMO from 13 to 17 March 2006. As of today's date, it will have before it four documents for consideration. The first is the US document containing the

progress report of an informal correspondence group under the leadership of the Chairperson of the Joint Expert Working Group (H.E. Ambassador Liliana Fernandez, Panama), which had tried to advance the consideration of the draft guidelines in the intersessional period. The correspondence group considered a number of papers, including a CMI paper concentrating on practical issues, to which was attached the questionnaire developed by the CMI-IWG, sent to CMI member associations. Reinforcing the Legal Committee's decision not to change the terms of reference to include maritime accidents, is the very useful analysis in the CMI paper of the term "maritime accident", together with the view expressed by the CMI that this terminology is quite broad enough to encompass most relevant situations.

Also attached to the report of the correspondence group was a submission by ISF/ICF/ICFTU containing an amended version of the draft guidelines on fair treatment of seafarers developed by the Working Group at its first session and a detailed submission from IFSMA also containing draft guidelines. It is fair to say that the IFSMA draft proposals were very different from those developed at the first session of the Joint Working Group and that IFSMA had expressed itself as dissatisfied with the Joint Working Group's first efforts at producing guidelines. The correspondence group also considered some extensive comments submitted by Australia on the IFSMA version of the draft guidelines as well as those on the version developed by the Joint Working Group at its first session.

The correspondence group discussed a wide variety of issues and suggestions, but did not reach any firm conclusions. It requested the second session of the Joint Working Group to consider its report and the annexes and decide, as appropriate. As a consequence, all of the above-cited documents have been circulated for consideration by the second session of the Joint Working Group, including the CMI paper.

In addition to the progress report of the correspondence group, three further submissions have hitherto been received by the Secretariat for circulation and consideration by the Joint Working Group. The first is a submission by ISF, ICF and ICFTU attaching revised draft guidelines for the consideration of the Working Group. The second paper is a submission by IFSMA, containing its comments and attaching its amended version of the draft guidelines, as they would like to see them developed. The third paper has been submitted by the USA – it also contains a set of draft guidelines and the United States' view as to what any workable guidelines should incorporate, including several new definitions not hitherto considered by the Group.

Given the differences not only in style, but also in content, of the versions of the draft guidelines submitted by ISF, ICS and ICFTU, on the one hand and that submitted by IFSMA, on the other hand, as well as the recently submitted US draft, the Joint Working Group will have its time cut out at its second session to come up with a version that will satisfy all participants. As I have already indicated, the aim is to complete the development of the guidelines as soon as possible, hopefully this year, so that they can thereafter be forwarded to the IMO Legal Committee and the ILO Governing Body for final approval and subsequent promulgation.

Issues to be considered by the Joint Working Group

A major, and one could say fundamental, difference between the two texts is the structure of the draft guidelines, that of IFSMA containing much more detail and divided into subject matter rather than into responsibilities of the various parties (as is the case with the ISF, ICF and ICFTU draft). i.e., The IFSMA draft proceeds on the basis of what should occur (a) where no *prima facie* case exists; (b) where a *prima facie* case exists; (c) principles to apply for the protection of seafarers under any form of detention; (d) preservation of evidence; (e) administrative exchange of persons between sovereign jurisdictions; (f) provision of welfare and accommodation.

The ISF/ICS/ICFTU submission, on the other hand, essentially carries on in the style of the original draft, i.e., under the headings:

(a) responsibilities of the detaining, port or coastal State

(b) responsibilities of the flag State

(c) responsibilities of the seafarer State.

This is a fundamental difference in approach and will need to be resolved if guidelines are to be agreed.

The US draft follows the lay-out of the ISF/ICS/ICFTU draft – but has some different ideas as to what the guidelines should provide.

Another issue relates to the question of seafarers detained as witnesses. This is covered, albeit in a fairly fleeting way, in the ISF, ICF and ICFTU draft through a provision which provides that the detaining Sate "shall consider non-custodial alternatives to pre-trial detention (including witnesses) especially where the seafarer is in regular employment". It does not appear to be addressed in any overt way in the IFSMA draft, presumably on the understanding that all the principles enunciated should apply to all seafarers who are detained, whether as potential witnesses or potential accused. The IFSMA draft does, however, contain a paragraph on the preservation of evidence in which it is suggested that evidence may be given from a distance through video links or audio taped statements. This presumably applies both to seafarers accused or potential witnesses. This issue will need to be clarified.

Another major difference between the two texts is the manner in which the financial consequences of detention of seafarers is addressed. The ISF, ICF and ICFTU paper simply places an obligation on flag States to fund repatriation of seafarers if the shipowner fails to do so and also an obligation on the seafarer's State to fund repatriation if both the shipowner and the flag State fail to do so. The nature and details of these obligations are not addressed. While similar provisions are also to be found in the IFSMA text, that text goes substantially further and, under the heading of "Provision of welfare and accommodation", there are detailed provisions relating to the establishment and management of a fund from which the costs of welfare and accommodation of seafarers who are detained in a foreign country may be met. The question of who bears the costs is obviously a very delicate one and the decision will have to be made as to whether, and if so, to what extent, the guidelines should address the issue.

Another issue for consideration is the inclusion, in the ISF, ICF and ICFTU submission, of an introduction containing definitions of the terms "maritime accidents" and "detention".

The definition of "maritime accident" in the ISF, ICF and ICFTU paper coincides with that developed by the CMI and put before the correspondence group, namely,

> "an unforeseen contingency or physical event connected to the navigation, operations, manoeuvring or handling of ships, or the machinery, equipment, material, or cargo on board such ships."

This is in contrast to the definition of "maritime accidents" proposed by IFSMA, namely,

> "any unforeseen contingency that is connected with the sea and shipping and in particular with the navigation and handling of ships, her documents, equipment, machinery, material or cargo on board."

The US paper has yet another definition, the main difference being the inclusion in the definition of a reference to the resultant damage. This difference of opinion may not be as fundamental as some of the other points mentioned, but it will be necessary to agree a definition of "maritime accident" as this will govern the scope of application of the proposed guidelines.

One issue that the CMI may wish to comment on is the inclusion, in the revised guidelines, of a reference to the ship's documents. I mention this because of the guidance issued by the Maritime Safety Committee and the Marine Environment Protection Committee concerning the retention of original records and documents on board ships. This guidance was issued in the form of a joint circular (MSC-MEPC.4/Circ.1 dated 26 September 2005) following those Committees' consideration of problems arising from the removal of original records or documents from ships (including seafarers' identity documents) by port and coastal State authorities in the context of judicial or administrative actions generally. The basic point made is that, because ships travel between multiple jurisdictions, retention of original documentation on board is the primary method of attesting to their compliance. Accordingly, these documents should not be removed in the absence of exceptional circumstances. When agreeing to the guidance, the MSC instructed the Secretariat to bring the circular to the attention of the Joint Working Group. One question for consideration by the Joint Working Group is whether the revised guidelines on fair treatment of seafarers should incorporate the guidance issued by the MSC and the MEPC or, at least, contain a reference to it.

The above are merely some of the issues that the Joint Working Group will need to address when it meets at IMO next month. I sincerely hope that the CMI will be represented at the meeting and that some good ideas and especially some practical ideas will emerge from this conference that can then be taken to the Joint Working Group. As Jean-Serge Rohart intimated in his introductory remarks, the establishment of the IMO Legal Committee in the

wake of the *Torrey Canyon* disaster rather upstaged the CMI as the primary body responsible for the development of international maritime treaties. But I would like to reassure him that the input provided by the CMI is very much appreciated by IMO and is often a vital element in the discussions of the IMO Legal Committee. It has been particularly helpful to the Committee to have the CMI's input on what laws/legal regimes apply in the many different jurisdictions, as well as the analysis of legal issues from the perspective of practising lawyers rather than Government representatives and academics who form the majority of the Legal Committee's delegates.

In closing these remarks, I would note that the final date for submission of documents to the session of the Working Group has now passed (it was Friday, 10 February). However, as I have said, these issues are already before the Working Group and, while no further submissions can be put forward at this stage, it will be possible to introduce new ideas on the subject through the oral debate and, possibly, through working papers issued during the course of the Working Group's deliberations.

THE PRACTICAL ISSUES

BY EDGAR GOLD

Introduction

The Comité Maritime International (CMI) established the CMI International Working Group[1] on the Fair Treatment of Seafarers in September 2004 as response by the work on this issue undertaken by the International Maritime Organization in conjunction with the International Labour Organization which established the Joint IMO/ILO *Ad Hoc* Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident. The IMO/ILO Working Group commenced its work in November 2004 and has also established a correspondence group that seeks input on the issue from other maritime interests.

This brief paper, compiled by the chairman of the CMI Working Group, attempts to address some of the practical issues that underlie the complex international and national legal and administrative problems that have to be considered in this area.

Defining 'maritime accident'

Some difficulties in the initial IMO/ILO deliberations in this area relate to defining the meaning of 'maritime accident'. Some interests had argued that the expression should instead be 'maritime incident'. This is the type of discussion that might make lawyers happy but does not provide a solution to the practical issues that need to be resolved. Although a number of good arguments can be made that 'maritime incident' might cover almost all areas where seafarers might be disadvantaged, it is suggested that if widely implemented fair treatment guidelines were to be achieved, it would only occur if the somewhat narrower 'maritime accident' expression were utilized. Fortunately this was also accepted in the IMO/ILO discussions that have already taken place.[2]

As a result the work that is presently taken place at a number of levels by the various interests involved has been confined to 'maritime accidents'.

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[1] Consisting of: Prof. Edgar Gold, AM, CM, QC, PhD, FNI, Brisbane, Australia, Chairman; Michael Chalos, Esq., New York; David Hebden, Esq., MNI, London; Linda Howlett, ICS, London; Kim Jefferies, Gard P&I Club, Arendal, Norway; Prof. P.K. Mukherjee, Ph.D., FNI; ITF Professor, World Maritime University, Malmö, Sweden. Rapporteur/Secretary: Colin de la Rue, Esq. Corresponding Member: Natalie Wiseman, ISF, London.

[2] See IMO Doc. LEG 90/15, paras. 379-383.

Although much international discussion has concentrated on maritime accidents involving serious oil pollution, there are many other maritime accidents that could lead to criminal action and commensurate disadvantage to seafarers. Maritime accidents include:

- Collision between two or more vessels
- Collision between a vessel and fixed objects, such as an offshore structure, navigational mark, or port installation
- Grounding or stranding of a vessel
- Fire or explosion on board due to various causes
- Machinery breakdown on board due to various causes
- Accidental overboard discharge of pollutants due to various causes, i.e. collision, grounding, fire, explosion, hull or machinery metal fatigue; machinery breakdown; negligence; misinformation or error
- Industrial accidents on board leading to personal injury and/or death of crew members, stevedores or other visitors. These include access problems involving pilot ladders; hold access ladders; tank entry; gangways; equipment failure involving cargo loading equipment; containers; pumping systems etc.; safety and health problems
- Accidents on board passenger vessels leading to personal injury and/or death of passengers from various causes
- Accidents arising from pilotage, towage or salvage operations
- Accidents arising from extreme weather conditions at sea, including foundering
- Accidents due to improper loading and/or stowage of cargo, including overloading
- Accidents occurring during cargo operations from various causes
- Accidents occurring during cargo transhipment or lightering operations

This list is not exhaustive and simply illustrates the wide variety of 'maritime accidents' that may occur. In most cases direct or indirect damage will result. This will give rise to damage claims by those who have been affected. In other words, the word 'accident' always implies an unforeseen, fortuitous, or unexpected event. Perhaps the best definition of 'maritime accident' can be based on that suggested by the International Federation of Shipmasters' Associations (IFSMA) in a recent submission.[3] It is, therefore, suggested that for the purposes of achieving an international consensus on the work undertaken in this area a 'maritime accident' should be defined as:

> *any unforeseen contingency that is connected with the sea and in particular with the navigation and handling of ships, and the documents, equipment, machinery, material, cargo or persons on board such ships.*

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[3] IFSMA, "Guideline on the Fair Treatment of Seafarers", 2nd Draft of 4 June 2005.

Criminal action by coastal and port states

Administrative or criminal action for damage resulting from a maritime accident against those considered to have been at fault or otherwise negligent is resorted to more frequently today. This is also the area where most difficulties for seafarers that may lead to unfair treatment may occur. This is due to the fact that in many maritime accident cases some type of direct or indirect human error or omission is likely to be present. This error or omission may not necessarily involve only those operating the vessel. In some cases a vessel may have been improperly constructed, repaired or even loaded without the direct involvement of those in charge of the vessel. In other cases, weather conditions, totally beyond the control of the seafarers involved, may have resulted in a major grounding with commensurate damage from pollutants. In other cases, cargo operations undertaken by stevedores, again generally beyond the control of the seafarers involved, may result in personal injury and death. Yet in such cases administrative and criminal action is often taken against the seafarers on the subject vessel.

Flag states have specific jurisdiction to take administrative and/or criminal action against seafarers operating vessels under their flag who have been proven to be reckless or incompetent or who have been under the influence of alcohol or narcotics when an accident has occurred.[4] Coastal and port states also have certain, strictly limited, rights to take action especially if damage has occurred.[5] However, regardless of whether the legal action taken involves criminal law or some mother administrative measures, those who are charged, accused or investigated have the right to be treated fairly. It has long been accepted under established international human rights provisions that anyone accused of a crime should always be treated fairly and be provided with all available legal rights. This is also spelt out specifically under the regime of the Law of the Sea.[6] Nevertheless, this is the area where problems have frequently arisen and which has necessitated the work that is now being undertaken.

Specifically the problems frequently faced by seafarers today can be summarized to include:

i) Criminal prosecution of seafarers involved in maritime accidents that have been beyond their control;
ii) Criminal prosecution of seafarers involved in maritime accidents due to negligence, despite the fact that negligence has rarely, if ever, been considered a criminal offence in the maritime sector;
iii) Lengthy delays in the administration of the criminal law process following maritime accidents resulting in seafarers being required to remain within the jurisdiction of the relevant state for long periods;
iv) Cases where the relevant seafarers have not been found at fault, they are, nevertheless, held under criminal law provisions as ‘material witnesses’;

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4 UN Convention on the Law of the Sea, 1982, (UNCLOS) Arts. 94, 97 & 217.
5 UNCLOS, Arts. 21, 25, 27, 218, 220, 225, 226, 228, 231 & 232.
6 UNCLOS, Art. 230.

v) Seafarers held in custody without criminal conviction; denied access to legal counsel or other assistance.

The CMI questionnaire

In late 2004 the CMI International Working Group sent out a questionnaire to 52 member states covering the administrative and criminal actions that may be taken in the aftermath of maritime accidents. (See Attachment I) Responses have so far been received from 22 states representing a variety of legal and maritime administrative systems. The common theme in these responses is that, although most states have the right to exercise investigative, administrative powers when a maritime accident occurs, such powers are always designed to protect the rights of the individuals who are involved. Furthermore, the responses also indicate that criminal action is only applicable in cases where there has been a clear breach of national law by the individual who is being charged. In other words, according to the responses, seafarers subject to criminal action must be presented with clear evidence of a breach of criminal law that led to the accident. From the responses it appears that if no such evidence is present, the coastal, port or flag state can only mount an administrative enquiry that may result in monetary penalties for the individuals involved or the ship that was the source of the accidental damage.

The CMI Questionnaire responses also indicate that a majority of states have the legislative powers to detain seafarers who have been involved in maritime accidents in order that administrative and criminal investigations can proceed. However, such states also indicate that such detention would always be for a reasonable period. The responses indicate that seafarers held as 'material witnesses' must be treated properly and that no discrimination between nationals and foreigners is permitted. Although there are some administrative differences between states that apply 'common law' principles and those subject to civil law, in general, the responses indicate that the rights of individuals are paramount in cases where the criminal law is applicable.

Initial conclusions

Even this very brief initial assessment of state responses raises the question of why the fair treatment problem has arisen in the first place. It is suggested that some of this difficulty appears to have arisen from the concern about the 'criminalisation of maritime accidents.' This may well be the wrong starting point. States may utilize their criminal law system when maritime accidents and commensurate damage, injuries and deaths occur. That is also confirmed in the responses to the questionnaires. Furthermore, sovereign states have the right to criminally prosecute individuals and other entities for maritime accidents, occurring in their jurisdiction, that involve a breach of national law. However, the problem is not really the use of the criminal law but its *administration* that has appeared to lead to unfair treatment of seafarers. This is especially so in cases where there is evidence that such seafarers had

no direct responsibility for the maritime accident. For example, if a vessel laden with a pollutant cargo experiences an engine breakdown and subsequently grounds and causes serious pollution, although the master has done everything possible to prevent the grounding, he can hardly be held criminally responsible for the damage that occurs.

Although the coastal state is likely to have national law provisions that make pollution a criminal offence it can only be applied if there was clear evidence that the accident that caused the pollution was due to a deliberate or grossly negligent act. Even if the negligent act could be attributed to the shipowner, cargo owner, or other entity, but not to those in charge of the ship, criminal sanctions against the seafarers involved will be limited. At best the coastal state could ensure that those in charge of the vessel would supply whatever material evidence might be required to impose criminal or civil law sanctions on those entities that were considered to have ultimate responsibility for the accident and the subsequent damage.

However it is at this stage that the 'unfair treatment' problem often arises. There may be several causes for this. Firstly, the damaged state may be frustrated in receiving insufficient cooperation from the relevant shipowner or other entity. In some cases, the shipowner may be difficult to locate, especially in cases of single-ship companies. As a result, this may result in the relevant seafarers being held longer than necessary—almost as an inducement for those responsible to come forward. Secondly, there may be differences of opinion between the damaged state and those in charge of the vessel on technical matters that led to the accident. The master may have a certain loyalty to the shipowner in order to protect the owner's interests. This may be interpreted as a lack of cooperation with the damaged state. In other cases, a master, who may have experienced the trauma of losing his ship, perhaps involving loss of life, ship and serious pollution damage, may be reluctant or even be physically unable to cooperate as fully as expected by the coastal state. In other cases, the coastal state may itself be partially to blame for what eventually occurred and is then anxious to ensure that those in charge of the vessel become the principal 'scapegoats'. There are numerous other permutations that may all lead to the *misadministration* of otherwise acceptable criminal law provisions and the commensurate lengthy detention and unfair treatment of seafarers. In other words, the principal problem in this area may well be administrative rather than legal. This appears also to be confirmed by the initial survey of the CMI Questionnaire responses.

At this stage the IMO/ILO deliberations on the subject have already concluded that a set of widely accepted international guidelines on the fair treatment of seafarers in case of a maritime accident is required. The IMO/ILO Working Group has already completed a first draft of such a document.[7] A number of other maritime interests and members of the IMO/ILO correspondence group (ISF, IFSMA, ITF etc.), are also in the

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[7] As adopted by the ILO Governing Body at its 292nd Session in March 2005, and by the IMO Legal Committee at its 90th Session in April 2005.

process of drafting their own versions of such guidelines. Hopefully these documents can be used to construct a single, generally accepted version that will assist the IMO/ILO Working Group. The CMI International Working Group will continue to assist in this process. In addition, the CMI will be holding an international colloquium on the subject in Cape Town in February 2006.

FIRST REPORT OF THE CMI INTERNATIONAL WORKING GROUP

BY EDGAR GOLD

Introduction

In recent years all sectors of the maritime industry and many governments have become concerned about the criminal action taken against seafarers in the aftermath of maritime accidents, especially those that involve marine pollution. Examples such as those involving the masters of vessels such as *Nissos Amorgas, Erika, Tasman Spirit, Virgo,* and *Prestige* immediately come to mind. However, there are many other cases, both reported and unreported, that illustrate this increasing trend where seafarers appear to have become the 'scapegoats' for maritime accidents, regardless of whether they are directly or indirectly involved or responsible.

In some cases masters of vessels and other sea-going personnel, have been arrested, imprisoned or otherwise detained, under a variety of 'criminal law' and other proceedings for extensive periods. Often the most basic rights of such persons are not observed and access to legal advice is frequently neither provided nor even permitted. Furthermore, such persons are often neither charged nor provided with information why they are being held. In many instances, such seafarers appear to be held as 'material witnesses' or for other 'administrative and technical' reasons. In other instances seafarers may be 'charged' with causing the relevant marine accident and/or with marine pollution. This occurs despite the fact that there is rarely any directly attributable responsibility for such accidents that may result from circumstances quite beyond the operational responsibility or competence of those so charged. It should be noted that these cases often occur in states that otherwise have an excellent reputation in terms of their criminal justice system and observance of the rights of individuals.

IMO/ILO Responses and Action

As a result of these problems, a number of states, international organisations and professional groups have expressed their concern about this growing phenomenon to the IMO, as well as the ILO. In response a 'Joint IMO/ILO *Ad Hoc* Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident' was formed in September 2004 and finalized later that year.[1] This Working Group, drawn from China, Egypt,

[1] See: ILO Doc. GB.291/STM/4 of November 2004 and IMO Doc. IMO/ILO/WGFTS1/-WP.6 of 19 January 2005.

Greece, Nigeria, Panama, Philippines, Turkey and the USA, as well as four shipowner and four seafarer members, has been requested to provide recommendations to the IMO Legal Committee and the ILO Governing Body, including draft guidelines on the fair treatment of seafarers in the event of a maritime accident. The Working Group's Terms of Reference require that account should be taken of the relevant international instruments. The Joint Working Group, chaired by Ambassador Liliana Fernandez of Panama, held its initial meeting at the IMO in London 17-19 January 2005. The terms of reference of the group were also finalized at that stage.[2] In addition, it was decided that a 'correspondence group' composed of other maritime interests, including interested states, would be formed. This group was requested to assist the Joint Working Group in its deliberations through specific, expert input. In particular, the correspondence group would include a number of non-governmental organizations such as:

– Comité Maritime International (CMI)
– International Shipping Federation (ISF)
– International Chamber of Shipping (ICS)
– International Confederation of Free Trade Unions (ICTFTU)
– International Association of Classification Societies (IACS)
– Baltic and International Maritime Council (BIMCO)
– International Federation of Shipmasters' Associations (IFSMA)
– International Group of P&I Associations
– International Association of Independent Tanker Owners (INTERTANKO)
– International Christian Maritime Association (ICMA)

During 2005 the IMO/ILO Correspondence Group received input and submissions from a number of these interests. At the 24th Assembly of the IMO a 'Resolution on Guidelines on Fair Treatment of Seafarers in the Event of a Maritime Accident' was adopted.[3] This Resolution had also been adopted by the ILO Governing Body at its 292nd Session in March 2005. At the same time the IMO/ILO Ad Hoc Expert Working Group also decided that its second session would be held in London 13-17 March 2006 and issued an invitation to IMO member states, UN and other specialized agencies, inter-governmental and non-governmental organizations to attend.[4]

At this stage a number of specific responses to the 'Guidelines' were submitted to the IMO/ILO Working Group by interested members of the 'Correspondence Group'. This included a submission from the ISF,ICS and ICFTU,[5] as well as working documents from the CMI and IFSMA, which were appended in a 'Progress Report from the Correspondence Group'.[6]

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2 IMO Doc: IMO/ILO IWGFTS 1/111 of 3 February 2005
3 IMO Resolution A.987(24). See IMO Doc: A 24/5(b)/1)
4 IMO Doc: A1/A/4.ILO. Circular Letter No. 2679 of 19 November 2005
5 IMO Doc: IMO/ILO/WGFTS 3 of 3 January 2006
6 IMO Doc: IMO/ILO/WGFTS 2 of January 2006

CMI Responses and Action

As the CMI was specifically requested to assist in this work. the 'CMI International Working Group on the Fair Treatment of Seafarers' (CMI-IWG) was formed in October 2004 to provide an initial response to this request. This International Working Group consists of:

- Prof. Edgar Gold, CM, AM, QC, of the Marine and Shipping Law Unit, University of Queensland, Brisbane, Australia, Chairman;
- Michael Chalos, of Fowler, Rodriguez & Chalos New York;
- David Hebden, Marine Consultant, formerly of Thomas Cooper & Stibbard, London;
- Linda Howlett, General Manager-Legal, International Chamber of Shipping (ICS), London;
- Kim Jefferies, Senior Claims Executive and Legal Adviser, Gard P&I Club, Arendal, Norway; and,
- Prof. P.K. Mukherjee, ITF Professor of Maritime Safety, World Maritime University Malmö, Sweden.[7]

The CMI International Working Group commenced its work as soon as it had been formed and communicated by electronic and other means as it was not able to hold its first meeting until 12 May 2005 in London. However, it was decided that the Working Group should concentrate its efforts in three areas:

- A CMI Questionnaire on the subject matter to be sent out to CMI member states;
- Developing close contacts and communications with other members of the IMO/ILO Correspondence Group; and,
- Participation in a Panel Discussion on the 'Fair Treatment' subject at the CMI Colloquium to be held in Cape Town, South Africa, in February 2006.

The CMI International Working Group's Questionnaire on Fair Treatment of Seafarers was sent to 52 member states in December 2004 by the CMI Head Office. The questionnaire covered administrative and criminal action that may be taken by states in the aftermath of maritime accidents. Responses were received from 25 states representing a variety of legal and maritime administrative systems.[8] Although a response rate to a CMI

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[7] Natalie Wiseman, the Secretary of the International Shipping Federation, London, and Colin de la Rue of Ince & Co, London, are corresponding members. When required the Working Group's secretariat services are performed by Olivia Murray, of Ince & Co., London. The CMI President, Me Jean-Serge Rohart, and Immediate Past President, Patrick Griggs, are ex officio Members. Three members of the Working Group, including the chairman are also Master Mariners with extensive shipboard service. Michael Chalos successfully defended Capt. Hazelwood of the *Exxon Valdez*.

[8] Argentina; Australia; Bulgaria; Belgium; Brazil; Canada; Chile; China; Croatia; Denmark; Dominican Republic; Finland; France; Germany; Hong Kong; Italy; Japan; Korea (Republic of); Nigeria; Norway; Slovenia; South Africa; United Kingdom; Uruguay; USA. In addition, an incomplete response was received from Indonesia.

questionnaire of almost 50 per cent is apparently considered satisfactory, it is disappointing that no responses were received from a number of states that have had specific difficulties in the area under discussion.[9]

The responses have been expertly summarized by David Hebden of the CMI Working Group.[10] The common theme in the responses is that although most states have the right to exercise investigative, administrative powers when a maritime accident occurs, such powers are always designed to protect the rights of the individuals who are involved. Furthermore, the responses also indicate that criminal action is only applicable in cases where there has been a clear breach of national law by the individual who is being charged. In other words, according to the responses, seafarers subject to criminal action must be presented with clear evidence of a breach of criminal law that led to the accident. From the responses it appears that if no such evidence is present, the coastal, port or flag state can only mount an administrative enquiry that may result in monetary penalties for the individuals involved or the ship that was the source of the accidental damage.

The CMI Questionnaire responses also indicate that a majority of states have the legislative powers to detain seafarers who have been involved in maritime accidents so that administrative and criminal investigations can proceed. However, such states also indicate that such detention would always be for a reasonable period. The responses indicate that seafarers held as 'material witnesses' must be treated properly and that no discrimination between nationals and foreigners is permitted. Although there are some administrative differences between states that apply 'common law' principles and those subject to civil law, in general, the responses indicate that the rights of individuals are paramount in cases where the criminal law is applicable.

During the year the CMI Working Group also made contact and worked closely with a number of other members of the IMO/ILO Correspondence Group. This was made easier as the ICS and ISF were actually represented on the Working Group. In addition, the chairman also held meetings and corresponded with IFSMA, which had significant involvement in the subject from the beginning, as well as the ICTFU (ITF). Documentation was exchanged whenever available. The CMI Working Group also drafted several working documents, including a paper that was presented at the 'International Conference on Security of Ships, Ports and Coasts 2005'.[11]

The CMI Working Group also developed an excellent Panel presentation on the subject for the CMI Colloquium in Cape Town in February 2006. Panellists include all but one member of the CMI Working Group, as well as Dr. Rosalie Balkin, Head of the IMO Legal Division, and Mr. Alfred Popp, Q.C.,

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[9] Greece, Spain and Russia. These states are also members of the CMI Executive Committee.

[10] It is expected that this detailed summary will be made available by the CMI in due course

[11] Edgar Gold, "Initiatives on Fair Treatment of Seafarers by the Comité Maritime International". Halifax, NS, Canada, September 2005

the former chairman of the IMO Legal Committee. Further details are available from the Colloquium programme as well as the CMI web site. It is hoped that this discussion will lead to the next steps to be undertaken by the CMI.

Legal and Practical Issues

The difficulties faced by seafarers that may lead to unfair treatment subsequent to a maritime accident can be confined to three general areas:

– Criminal action is today frequently taken against seafarers involved in maritime accidents that have been beyond their control;
– In many states regardless of whether seafarers, who have been involved in a maritime accident, are at fault or not, they are treated as criminals;
– Even in cases where the relevant seafarers have not been found at fault, they are, nevertheless, held under criminal law provisions as 'material witnesses'.

Some difficulties in the initial IMO/ILO deliberations in this area relate to defining the meaning of 'maritime accident'. Some interests had argued that the expression should instead be 'maritime incident'. This is the type of discussion that might make lawyers happy but does not provide a solution to the practical issues that need to be resolved. Although a number of good arguments can be made that 'maritime incident' might cover almost all areas where seafarers might be disadvantaged, it is suggested that if widely implemented fair treatment guidelines were to be achieved, it would only occur if the somewhat narrower 'maritime accident' expression were utilized. Fortunately this was also accepted in subsequent IMO/ILO discussions.[12]

As a result, the work that is presently taking place at a number of levels by the various interests involved has been confined to 'maritime accidents'. Although much international discussion has concentrated on maritime accidents involving serious oil pollution, there are many other maritime accidents that could lead to criminal action and commensurate disadvantage to seafarers. Maritime accidents include:

– Collision between two or more vessels
– Collision between a vessel and fixed objects, such as an offshore structure, navigational mark, or port installation
– Grounding or stranding of a vessel
– Fire or explosion on board due to various causes
– Machinery breakdown on board due to various causes
– Accidental overboard discharge of pollutants due to various causes, i.e. collision, grounding, fire, explosion, hull or machinery metal fatigue; machinery breakdown; negligence; misinformation or error
– Industrial accidents on board leading to personal injury and/or death of crew members, stevedores or other visitors. These include access problems involving pilot ladders; hold access ladders; tank entry;

[12] See IMO Doc. LEG 90/15, paras. 379-383

gangways; equipment failure involving cargo loading equipment; containers; pumping systems etc.; safety and health problems
- Accidents on board passenger vessels leading to personal injury and/or death of passengers from various causes
- Accidents arising from pilotage, towage or salvage operations
- Accidents arising from extreme weather conditions at sea, including foundering
- Accidents due to improper loading and/or stowage of cargo, including overloading
- Accidents occurring during cargo operations from various causes
- Accidents occurring during cargo transhipment or lightering operations

This list is not exhaustive and simply illustrates the wide variety of 'maritime accidents' that may occur. In most cases direct or indirect damage will result. This will give rise to damage claims by those who have been affected. In other words, the word 'accident' always implies an unforeseen, fortuitous, or unexpected event. Perhaps the best definition of 'maritime accident' may be:

> any unforeseen contingency that is connected with the sea and in particular with the navigation and handling of ships, and the documents, equipment, machinery, material, cargo or persons on board such ships.[13]

Administrative or criminal action for damage resulting from a maritime accident against those considered to have been at fault or otherwise negligent is resorted to more frequently today. This is also the area where most difficulties for seafarers that may lead to unfair treatment may occur. This is due to the fact that in many maritime accident cases some type of direct or indirect human error or omission is likely to be present. This error or omission may not necessarily involve only those operating the vessel. In some cases a vessel may have been improperly constructed, repaired or even loaded without the direct involvement of those in charge of the vessel. In other cases, weather conditions, totally beyond the control of the seafarers involved, may have resulted in a major grounding with commensurate damage from pollutants. In other cases, cargo operations undertaken by stevedores, again generally beyond the control of the seafarers involved, may result in personal injury and death. Yet in such cases administrative and criminal action is often taken against the seafarers on the subject vessel.

Flag states have specific jurisdiction to take administrative and/or criminal action against seafarers operating vessels under their flag who have been proven to be reckless or incompetent or who have been under the influence of alcohol or narcotics when an accident has occurred.[14] Coastal and port states also have certain, strictly limited, rights to take action

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[13] Based on a submission by IFSMA. See: IFSMA, "Guidelines on the Fair Treatment of Seafarers", 2nd Draft of 4 June 2005

[14] UN Convention on the Law of the Sea, 1982, (UNCLOS) Arts. 94, 97 & 217

especially if damage has occurred.[15] It has long been accepted under established international human rights provisions that anyone accused of a crime should always be treated fairly and be provided with all available legal rights. This is also spelt out specifically under the UNCLOS regime.[16]

Given this very brief initial assessment of state responses, the question arises of why the fair treatment has arisen in the first place? Some of this difficulty appears to have arisen from the concern about the 'criminalisation of maritime accidents.' This may well be the wrong starting point. Most states utilize their criminal law system when maritime accidents and commensurate damage, injury and death occur. That is also confirmed in the responses to the questionnaires. Furthermore, there is no question that sovereign states have every right to criminally prosecute individuals and other entities for maritime accidents, occurring in their jurisdiction, that are in breach of national law. The problem is not the use of criminal law but its *administration* that has appeared to lead to unfair treatment of seafarers, especially in cases where there is evidence that such seafarers had no direct responsibility for the accident. For example, if a vessel laden with a pollutant cargo experiences an engine breakdown and subsequently grounds and causes serious pollution, although the master has done everything possible to prevent the grounding, he can hardly be held criminally responsible for the damage that occurs?

Although the coastal state is likely to have national law provisions that make pollution a criminal offence it can only be applied if there was clear evidence that the accident that caused the pollution was due to a deliberate or negligent act. Even if the negligent act could be attributed to the shipowner, cargo owner, or other entity, but not to those in charge of the ship, criminal sanctions against the seafarers involved will be limited. At best the coastal state could ensure that those in charge of the vessel would supply whatever material evidence might be required to impose criminal or civil law sanctions on those entities that were considered to have ultimate responsibility for the accident and the damage.

However it is at this stage that the 'unfair treatment' problem often arises. There may be several causes for this. Firstly, the damaged state may be frustrated in receiving insufficient cooperation from the relevant shipowner or other entity. In some cases, the shipowner may be difficult to locate, especially in cases of single-ship companies. As a result, this may result in the relevant seafarers being held longer than necessary – almost as an inducement for those responsible to come forward. Secondly, there may be differences of opinion between the damaged state and those in charge of the vessel on technical matters that led to the accident. The master may have a certain loyalty to the shipowner in order to protect the owner's interests, which may be interpreted as a lack of cooperation with the damaged state. In other cases, a master, who may have experienced the trauma of losing his ship, perhaps

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[15] UNCLOS, Arts. 21, 25, 27, 218, 220, 225, 226, 228, 231 & 232

[16] UNCLOS, Art. 230

involving loss of life and pollution damage may be reluctant or even be physically unable to cooperate as fully as may be expected by the coastal state. In other cases, the coastal state may itself be partially to blame for what eventually occurred and is then anxious to ensure that those in charge of the vessel become the principal 'scapegoats'. There are numerous other permutations that may all lead to the misadministration of otherwise acceptable criminal law provisions and the commensurate lengthy detention and unfair treatment of seafarers. In other words, the principal problem in this area is administrative rather than legal.

Conclusion

At this stage the IMO/ILO deliberations on the subject have already concluded that a set of widely accepted international guidelines on the fair treatment of seafarers in case of a maritime accident is required. As indicated above, the IMO/ILO Working Group has already completed a first draft of such a document that has been the subject of an IMO Resolution. Several members of the IMO/ILO Correspondence Group (ISF, ICS. ICFTU, IFSMA, etc.), are also in the process of drafting their own versions of such guidelines or suggesting further amendments to existing drafts. Hopefully these documents can be used to construct a single, generally accepted version that will assist the IMO/ILO Working Group. The CMI International Working Group believed that this subject is not only of importance to international shipping but also that it the CMI's expertise is required to develop a viable international regime in this area. The subject will be extensively discussed at the CMI's Cape Town Colloquium and it is hoped that the next stage of CMI involvement will then be decided.

CMI QUESTIONNAIRE AND CIRCULAR LETTER

BY THE PRESIDENT OF CMI

PART I
(Answers to these Questions are essential)

Question 1:

Who has responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of your State?

Question 2:

When maritime accidents and/or marine pollution incidents occur within the waters under the jurisdiction of your State, what process of accident investigation is legally required?

Question 3:

Do your State's maritime accident and/or marine pollution investigative processes contemplate criminal charges against any ships' personnel involved and, if so what action may be involved?

Question 4:

If there is no criminal process, what other investigative process is utilized?

Question 5:

Does your State's investigative process permit detention of seafarers and, if so, under what circumstances and with what safeguards?

Question 6:

If seafarers are required to be present for an investigation, trial or other hearing will they be permitted to leave your State until such investigation, trial or other hearing takes place?

Question 7:

Does your State require a financial surety to ensure that seafarers return for any subsequent hearing and, if so, how is the amount of such a surety determined and what form is required?

Question 8:

Is your State's maritime administration or other authority given legal responsibility for the protection, rights and welfare of all seafarers and, if so, how is this responsibility administered?

PART II
(Answers to these Questions would be most helpful)

Question 9:

If a maritime accident resulting in serious pollution occurs in waters under the jurisdiction of your State that involves a foreign-flag vessel with a crew of different nationalities, what is the expected role of vessel crew members held responsible in the subsequent investigative process?

Question 10:

If the accident, as outlined in Question 10, is due to negligence but not wilful misconduct by responsible crew members, will your State proceed only with pollution damage claims under the accepted international civil liability and compensation system?

Question 11:

If the answer to Question 10 is 'No', what other processes or procedures will be undertaken by your State?

Question 12:

If the maritime accident outlined in Question 9 occurred outside your State's Territorial Seas, although damage occurs in areas under your State's jurisdiction, would the procedures involved be different?

Question 13:

Regardless whether your State's investigative process utilizes the criminal justice system or any other system, will the relevant vessel crew members be detained? If so:

a. What is the legal reason for such detention?
b. What rights will the accused/detained crew member have during the process, and do such rights differ from those available to citizens of your State?
c. Will full reasons and/or charges be provided to those detained?
d. What is the expected length of such detention?
e. Where and how will the seafarers involved be detained?
f. What access to legal advice and/or defence will such personnel have available to them?
g. Will the vessel's representatives, agents, family members, labour organisation representatives, or lawyers be given immediate and full access to those detained?
h. Will the relevant seafarers have the legal right not to answer questions that may be considered self-incriminating, if so advised?

Question 14:

Does your Association have any other comments, suggestions or recommendations on this subject?

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Dear President,

In recent years all sectors of the maritime industry and many governments have become concerned about the criminal action taken against seafarers in the aftermath of maritime accidents, especially those that involve marine pollution. In some cases masters of vessels and other sea-going personnel, have been arrested, imprisoned or otherwise detained, under a variety of 'criminal law' and other proceedings for extensive periods. Often the most basic rights of such persons are not observed and access to legal advice is not provided nor even permitted. Furthermore, such persons are often neither charged nor provided with information why they are being held. In many instances, such seafarers appear to be held as 'material witnesses' or for other 'administrative and technical' reasons. In other instances seafarers may be 'charged' with causing the relevant marine accident and/or with marine pollution. This occurs despite the fact that there is rarely any directly attributable responsibility for such accidents that may result from circumstances quite beyond the operational responsibility or competence of those so charged.

As a result, a number of states, international organisations and professional groups have expressed their concern about this growing phenomenon to the IMO, as well as the ILO. In response a 'Joint IMO/ILO *Ad Hoc* Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident' has recently been formed. This Working Group, drawn from China, Egypt, Greece, Nigeria, Panama, Philippines, Turkey and the USA, has been requested to provide recommendations to the IMO Legal Committee and the ILO Governing Body, including draft guidelines on the fair treatment of seafarers in the event of a maritime accident. The Working Group's Terms of Reference require that account should be taken of the relevant international instruments including:

– The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic and Cultural Rights (ICESCR), as well as other international standards, guidelines, practices and procedures relating to the rights of those who may be detained for the purpose of investigation of a crime, a civil offence, or a maritime casualty or incident;
– The United Nations Convention on the Law of the Sea;
– Pertinent IMO and ILO instruments, including MARPOL 73/78 and the ILO Declaration on Fundamental Principles and Rights at Work, 1998; and
– International recognized standards and guidelines on settlement of disputes, including various liability and compensation regime.

The CMI has been requested to assist in this work. In response, the 'CMI International Working Group on the Fair Treatment of Seafarers' (CMI-IWGFTS) has been formed to provide an initial response to this request. This Working Group consists of: Prof. Edgar Gold, QC, Brisbane, Australia, Chair; Michael Chalos, New York; David Hebden, London; Linda Howlett (ICS), London; Kim Jefferies (Gard P&I), Arendal, Norway; Prof. P.J. Mukherjee, Malmö, Sweden;

This Questionnaire will assist the CMI-IWGFTS in providing input obtained from the expertise available in the membership of the various national maritime law associations. As a result, you are requested to respond as fully as possible to the questions herewith submitted. The Questionnaire is in two parts. Although it would be most helpful if your Association could answer all questions, answers to Part I questions are essential. Your response should reach the CMI Secretariat, Mechelsesteenweg 196, 2018 Antwerpen, Belgium, email: admini@cmi-imc.org, as soon as possible, but no later than 31st March 2005.

Yours sincerely,
JEAN-SERGE ROHART

LIST OF CMI MEMBERS*

Argentina
Australia
Belgium
Bulgaria
Brazil
Canada
Chile
China
Columbia
Costa Rica
Croatia
Denmark
Dominican Republic
DPR Korea
Ecuador
Finland
France
Germany
Greece
Guatemala
Gulf
Hong Kong
Indonesia (Incomplete)
Ireland
Italy
Japan
Korea
Malaysia
Malta
Mexico
Morocco
Netherlands
Netherlands Antilles
New Zealand
Nigeria
Norway
Pakistan
Panama
Peru
Philippines
Poland
Portugal
Russia
Singapore
Slovenia
South Africa
Spain
Sweden
Switzerland
Turkey
UK
Uruguay
USA
Venezuela

* Those in **bold** responded to the International Working Group's Questionnaire.

SUMMARY OF RESPONSES OF CMI MEMBERS TO THE QUESTIONNAIRE (20 June 2005)

PREPARED BY DAVID HEBDEN

Caution: The Summary brings together the replies of CMI member organisations to the above questionnaire; it is not to be used as an authoritative guide to the relevant Law and Practice in any particular State. If you need specific advice for a particular problem you should always consult a duly qualified Lawyer knowledgeable in maritime law and practicing in the Country concerned. David Hebden (davidhebden@btinternet.com)

Question 1:

Who has responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of your State?

Argentina

The Coast Guard. (Prefectura Naval Argentina)

Australia

Australia has a federal system of government under which responsibilities are shared between the Federal and State governments.

In respect of **maritime safety**, ships on overseas voyages (which are the ships relevant to this questionnaire) are the responsibility of the Federal Government, specifically the Australian Maritime Safety Authority (AMSA) for general safety administration and the Australian Transport Safety Bureau (ATSB) for casualty investigation.

In respect of **marine pollution**, the State/Territory governments have responsibility within ports and the territorial sea, while the Federal Government has responsibility beyond the territorial sea.

For marine pollution prevention (i.e. application and enforcement of MARPOL 73/78), the relevant agencies are:

Federal	AMSA
Queensland	Maritime Safety Queensland
New South Wales	New South Wales Maritime
Victoria	Environment Protection Agency
Tasmania	Department of Primary Industries, Water and Environment
South Australia	Department for Environment and Heritage
Western Australia	Department for Planning and Infrastructure
Northern Territory	Department of Infrastructure, Planning and Environment

For marine pollution control (i.e. responding to incidents), the relevant agencies are:

Federal	AMSA
Queensland	Maritime Safety Queensland
New South Wales	New South Wales Maritime
Victoria	Marine Safety Victoria

Tasmania	Department of Primary Industries, Water and Environment
South Australia	Department of Transport and Urban Planning
Western Australia	Department for Planning and Infrastructure
Northern Territory	Department of Infrastructure, Planning and Environment

Bulgaria

According to the Commercial Shipping Code (C S C) (published in the State gazette, 55 of 14.07. 1970, recently amended in State gazette 55 of 25.06. 2004) the authorized body responsible to the control of maritime safety and marine pollution prevention is the Executive Agency "Marine Administration" at the Minister of transport and communications. This Agency is a legal entity on budget and own resources, a secondary authorizing officer with budget credits. The headquarter of the Executive Agency "Marine Administration" is Sofia and this authorized body has territorial sections in Burgas, Varna, Russe and Lom.

The Executive Agency "Marine Administration" exercise:

1. A State control on Bulgarian flag vessels, related to observance of legally established administrative, technical and social requirements;

2. A State control in the ports on the foreign-flag vessels from the moment of their entry until their departure from Bulgarian ports. This State control consists of international safety standards observance, prevention of pollution and occupational safety and health on board of vessels, entering to Bulgarian ports. In a period of a calendar year the Executive Agency "Marine Administration" accomplishes a number of examinations, covered minimum of 25 percent of vessels, entering to Bulgarian ports;

3. A state control on the safety shipping in maritime territories and Bulgarian length of Danube river.

The Minister of transport and communications determines by ordinances the legal requirements related to the safety of various types of vessels, their construction and shipping equipment.

Part II of Commercial Shipping Code (CSC) consists of special legal requirements dedicated on shipping safety. According to art.72 of CSC there is no possible to put into service a vessel without an authorized statement of Executive Agency "Marine administration" that this vessel is build, get ready and it's crew has the qualification needed according to the safety of shipping requirements. The ship-owner has to cooperate with the official authorities and to enterprise the measures needed concerning the vessels and it's crew safety, the prevention of marine pollution from vessels and the keeping and restoration of fish resources. The ships and other vessels, shipping in the internal waters, territorial sea and adjacent waters of Republic of Bulgaria, must to have equipment of radio-communication methods approved by Executive Agency "Marine administration". This approval has to be done in accordance with the requirements of registration, equipment, installations of radio-communication established by Telecommunications. According to art.73 of CSC the Executive Agency "Marine administration" accomplishes vessels and ship-owners examinations related to safety of shipping requirements and prevention of marine pollution requirements. As a result of these examinations the Executive Agency "Marine administration" issues authorizations. The examinations above mentioned could be accomplished by other organizations authorized by Executive Agency "Marine administration" and approved by the Minister of transport and communications issues an ordinance related to the conditions and procedure of examinations. The determination of Bulgarian vessels class, the technical control on their construction and exploitation have to be accomplished by Bulgarian legal entities, named classification organization, or by foreign organizations receiving governmental approval by Executive Agency "Marine administration" and Minister of transport and communications. After the examinations of vessels overall

state, accomplished by Executive Agency "Marine administration"or other authorised organisations. The Executive Agency "Marine administration" issues a special safety certificates, in the case that the requirements have been observed.

Brazil

Maritime Authority has responsibility for administering, enforcing maritime safety, marine pollution prevention and control in waters under of Brazilian State. According to Brazilian law, the Maritime Authority is represented by the Director of Coasts and Ports (Diretor de Portos e Costas).

Canada

The Canadian Department of Transport has principal responsibility for administering and enforcing maritime safety in Canada. With respect to marine pollution prevention and control in Canadian waters, responsibility is held principally by the Canadian Department of Transport, the Canadian Department of Fisheries and Oceans and the Canadian Department of the Environment. The principal statutes governing the role of federal regulators in maritime safety and pollution prevention and control are the *Canada Shipping Act* (which will be replaced by the *Canada Shipping Act* 2001, not yet in force), the *Fisheries Act*, the *Canadian Environmental Protection Act*, 1999, and the *Migratory Birds Convention Act*. The latter two statutes may shortly be amended by a bill currently before Parliament (Bill C-15), which would expand the jurisdiction and powers of the Canadian Department of the Environment.

Chile

The Maritime Authority, through the General Direction of the Marine Territory and Merchant Shipping (Dirección General del Territorio Marítimo y de Marina Mercante).

China

According to the provisions of article 3 of Maritime Traffic Safety Law of the People's Republic of China (MTSL) and article 2 of Regulations of the People's Republic of China on the Investigation and Handling of Maritime Traffic Accidents (RIHMTA), the harbor superintendence agencies of the People's Republic of China have responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of China.

According to article 48 of MTSL and article 3, section 2 of RIHMTA, if the accidents happen within the waters of fishing harbors, the state fisheries administration and fishing harbor superintendence agencies shall have responsibility for administering and enforcing maritime safety and marine pollution prevention and control.

According to article 49 of MTSL and article 3, section 2 of RIHMTA, the internal administration of offshore military jurisdictional areas and military vessels and installations, the administration of surface and underwater operations carried out for military purposes, and the inspection and registration of public security vessels, the provision of their personnel and the issuing of their port entry and departure visas shall be separately prescribed by the relevant competent departments of the state in accordance with this law.

Croatia

Maritime Safety and Marine Environment Protection Directorate of the Ministry of the Sea, Tourism, Transport and Development is responsible for enforcing maritime safety and prevention of marine environment pollution from ships.

Denmark

In Denmark, maritime safety and marine pollution prevention and control are generally governed by two acts of parliament, i.e. the Safety at Sea Act of 1998 is amended (referred to as the "SSA") and in the Maritime Environment Act of 1993 as amended (referred to as the "MEA").

The SSA is contains general rules on the construction, equipment and operation of vessels, but it first of all constitute a statutory framework which authorises the Ministry of Economic and Business Affairs to establish more detailed rules on maritime safety, including rules concerning construction equipment and operation of vessels and rules concerning navigation. It may be mentioned that e.g. the SOLAS Convention, the MARPOL Convention (as far as vessel requirements are concerned) and the COLREG Convention have been given effect in Denmark by way of regulations issued under the provisions of the SSA.

The MEA contains general rules on marine pollution prevention and control, but-just as the SSA-it first of all constitutes a statutory framework which authorises the Ministry of the Environment to establish more detailed rules on marine pollution prevention and control. It may be mentioned that the MARPOL Convention (apart from vessel requirements) has been given effect by way of the MCA.

The MEA is administered by both the Ministry of the Environment, which is mainly responsible for issuing statutory instruments to provide more detailed sets of rules concerning marine pollution prevention and control and to ensure compliance with international conventions and agreements and the Ministry of Defence, which is mainly responsible for enforcing the rules in MCA by way of marine environment surveillance, including vessel inspections, and marine pollution control, including intervention against polluting vessels. The Ministry of the Environment has delegated a number of its powers under the MEA to different agencies, including the Environmental Protection Agency and the Maritime Authority. The Ministry of Defence has delegated most of its authority and the MCA to the Chief of Defence, which in turn has delegated its authority to the Admiralty. It is also noteworthy that the police have been given direct authority under the MEA to inspect vessels and intervene against polluting vessels.

Both the SSA and MEA make the violation of certain provisions under the acts subject to criminal liability, and both shipowners, masters, officers and crew members may incur criminal liability.

Crimes are generally investigated by the police, prosecuted by the prosecution service and tried by the courts.

However, in the case of violation of rules established under the provisions of the SSA concerning certain log books related to the prevention of pollution or in the case of violation of the prohibition of discharge of oil from vessels under the MCA, the Maritime Authority and the Admiralty respectively are – if the violation is deemed not to involve other punishment than the fine – authorised to issue a fixed-penalty notice which will dispense with the need for a trial if it is accepted by the offender.

Dominican Republic

The Dominican Republic Navy (Marina de Guerra de la Republic Dominicana) MDG = DR Navy, as per the provisions of local law 3003 and 1951. The head of the Dominican Navy is the Chief of Staff (Jefe de Estado Mayor MDG) and the ones are dealing immediately with such occurrences are the Harbourmasters = Port Commanders (Comandantes de Peurto), under the direction of the Director of Port Commanders/Harbourmasters (Director General de Comandancias de Puerto).

Finland

Ministry of Environment, Finnish Maritime Administration (FMA), Coast Guard, Police and Customs.

France

Different ministers are implicated: each one is jealous of his prerogatives:
Justice (for law, rules and sentences),
Army (national marine) for traffic controls and reports of breaches of the law
Finances (through customs)
Transports: the use of the personnel of Army to control ships (CROSS) and for investigations.
The maritime Prefect (Préfet maritime) represents all these services in sea.

Germany

The German Ministry of transport, building and housing has got the responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the German waters. The maritime administration is part of this ministry.

Greece

The Ministry of Merchandile Marine holds responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the Greek waters through the local Port Authorities each of which is competent for a specific marine area. In particular, there is the general jurisdiction of a special service called "Administration for the Protection of the Marine Enviroment" (A.P.M.E.). Moreover, "Stations for prevention and fighting off the marine pollution" function in all major ports of Greece such as Piraeus, Thessaloniki, Patra etc. Among the duties of these Stations is to supervise the vessels during the process of loading and unloading the oil cargo, to control the transport of oil remainders from oil vessels to the special venues which are responsible for collecting toxic and oil waste, to generally supervise the marine space and deal with any incident of marine pollution by putting into action specially trained personnel.

Hong Kong

Hong Kong Marine Department (MD) is responsible for administering and enforcing maritime safety and marine pollution prevention and control in waters of Hong Kong by establishing local legislation to give effect to various international Conventions on safety and pollution prevention. Enforcement is via flag State and port State control.

Italy

The responsibility for administering and enforcing maritime safety and marine pollution under Italian jurisdiction rests on the Port Authority competent for the relevant area, who may avail itself of the Criminal Police and of the N.A.S. (Nucleus Anti Sophistication) of the Carabinieri.

Japan

The Ministry of Land, Infrastructure and Transport is the responsible body for implementation of the IMO Conventions, including promulgation of national laws and regulations. The Japan Coast Guard is the administrative entity responsible for enforcement of the maritime laws and regulations at sea.

Korea

Safety Management Bureau and Korea Coast Guard, two divisions of Ministry of Maritime Affairs & Fisheries)(140-2 Gye-Dong, Jongno-Gu, Seoul, 110-793, Korea, Tel 82-2-3674-6114 Fax *82-2-3674-6044)* assume the responsibility.

Nigeria

The Maritime Safety Administration of Nigeria which is the National Maritime authority (NMA).

Norway

The Norwegian Coastal Administration is responsible for the governmental preparedness against acute pollution.

Slovenia

The responsibility is on Ministry for transportation and connections (for the maritime safety) and the Ministry for environment (for the marine pollution prevention). The Direction for maritime transport, which is under Ministry for transportation and connections is controlling the condition of the vessels to prevent marine pollution incidents.

South Africa

The South African Safety Maritime Authority ["SAMSA"] is responsible for administering and enforcing maritime safety and marine pollution prevention and control legislation in South Africa. SAMSA is a statutory body to which has been delegated the rights, duties and obligations of the Marine division of the South African Department of Transport.

Sweden

The Swedish Maritime Administration is responsible for administrative issues regarding maritime safety and oil pollution at sea. The Swedish Coast Guard supervises that the rules are followed and is also in charge of oil pollution clean up measures at sea.

UK

1.1 The Maritime and Coastguard Agency (MCA)

1.1.1 Administering Maritime Safety and Marine Pollution Prevention and Control

The Maritime & Coastguard Agency (MCA) is responsible for implementing the UK Government's maritime safety policy. The MCA is an executive agency (created in 1998 by the merger of the Coastguard Agency and the Marine Safety Agency) of the Department for Transport. The current Chief Executive is Mr. Stephen Bligh. Key functions of the MCA are:

Developing, promoting and enforcing high standards of marine safety

Minimising loss of life amongst seafarers and coastal users

Minimising pollution from ships of the sea and coastline.[1]

The powers of the MCA derive mainly from the Coastguard Act 1925, the Merchant Shipping Act 1995 (MSA 95) and the Merchant Shipping and Maritime Security Act 1997 (MSMSA 97) and associated secondary legislation.

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[1] Memorandum of Understanding between the Health and Safety Executive, the Maritime and Coastguard Agency and the Marine Accident Investigation Branch for health and safety enforcement activities etc at the water margin and offshore.

The directorate of Operations within the MCA consists of 6 parts (Enforcement, Survey, Inspection including Port State Control, Her Majesty's Coastguard; Search and Rescue, Incident Prevention and Counter Pollution). The Counter Pollution section responds to pollution incidents assessing incoming reports and taking appropriate action to mitigate the effect on the UK environment.[2]

1.1.2 Enforcement of Maritime Safety and Pollution Prevention and Control

As mentioned above, 'Enforcement' is one of the six branches of the MCA. The Enforcement branch of the MCA investigates breaches of Merchant Shipping Legislation and prosecutes offenders (for example for pollution, safety and manning, breaches of the COLREGS, forged certificates) where appropriate.[3] It should be recognised that only 'significant breach' of the law will lead to an Enforcement Unit investigation (which may result in an Official Caution or, as in approximately 15% of cases, a prosecution).[4]

1.2 The Environment Agency (EA)

1.2.1 Administering Maritime Safety and Marine Pollution Prevention and Control

The Environment Agency (EA), established pursuant to the 1995 Environment Act as a non-departmental public body is sponsored largely by the Department for Environment, Food & Rural Affairs (DEFRA) and the National Assembly for Wales (NAW). The Secretary of State for Environment, Food and Rural Affairs has the lead sponsorship responsibility for the Agency as a whole.[5] The EA aims to protect and enhance the environment and, in so doing, to make a contribution towards the objective of achieving sustainable development.[6] In working towards this aim the EA has many functions, only some of which are related to maritime safety and marine pollution. These functions include:

Integrated Pollution Prevention and Control
Integrated Pollution Control, radioactive substances regulation
Waste Management
Water Quality
Land Quality
Water Resources
Flood Defence
Navigation
Conservation
Recreation
Fisheries

Within the areas for which it has responsibility, the EA not only informs and educates but also regulates. As part of its regulatory role, the EA grants various authorisations (licences, permits etc), gives advice, inspects and monitors licence holders.

1.2.2 Enforcement of Maritime Safety and Pollution Prevention and Control

The Environment Agency is responsible for enforcing environmental legislation in England and Wales, and it has published an Enforcement and Prosecution Policy ("the Policy"). The offences with which the EA is concerned may overlap with those investigated by the MCA, and in this connection the Policy provides that: *"where the*

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2 www.mcga.gov.uk
3 *Ibid.*
4 For further details of a 'significant breach' see para 2.1.3 below.
5 www.defra.gov.uk.
6 *Ibid.*

Agency and another enforcement body both have the power to prosecute, the Agency will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence." With respect to incidents at sea, the EA's website highlights the fact that operational discharges from vessels are the responsibility of the MCA. Although the EA has a joint regulatory role for spillage of oil, the lead is normally taken by the MCA.[7]

1.3 Role of the Crown Prosecution Service ("the CPS") and relationship with other prosecuting authorities

The Crown Prosecution Service (CPS) has a duty to take over proceedings instituted by or on behalf of the Police.[8] However, the CPS also has a discretion to take over proceedings in any other case.[9] In particular areas such as maritime safety and marine pollution, however, it is recognised that certain other prosecuting authorities have special expertise or statutory power and are therefore able to bring prosecutions directly. In such cases the CPS will not usually become involved; indeed sometimes it may be appropriate for proceedings originally brought by the CPS to be delegated to a different prosecuting authority. The CPS may on occasion have to take over the conduct of proceedings which would otherwise be pursued by another body, but only in exceptional circumstances would this be against the wishes of the other prosecuting authority.

With respect to enforcement of the criminal law, various prosecuting authorities (including the CPS, the MCA and the EA) co-ordinate their respective roles pursuant to arrangements contained in the *Convention Between Prosecuting Authorities To Provide Arrangements For Ensuring Effective Co-ordination Of Decision Making And Handling In Related Cases Which Are The Responsibility Of Different Authorities* ("the Convention"). This Convention, drawn up in 1998, is of course a purely domestic rather than international agreement.

The object of the Convention is to address the difficulties and uncertainties which may arise where two or more prosecuting authorities propose to proceed against an individual or company for related offences, and where decisions are made and announced at different times.[10] The term "related" refers to a situation where two or more prosecuting authorities plan to prosecute the same individual or company for offences which may lead to associated court proceedings. The Convention provides a structure to ensure a co-ordinated approach to the decision-making process. The Convention focuses on the need for effective lines of communication; prescribes issues to be discussed by contracting prosecuting authorities (for example, the possibility of a prosecution being jointly conducted); and provides for the appointment of a liaison officer from each prosecuting authority.

Uruguay

In maritime safety and marine pollution matters, the Maritime Authority is the Coast Guard (Prefectura Nacional Naval P.N.N.

USA

The United States Coast Guard is the primary enforcer of these laws. However, depending on factual circumstances there can be overlapping jurisdiction with other federal agencies including the Federal Bureau of Investigation (FBI), Department of

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7 See www.environment-agency.gov.uk.
8 Prosecution of Offences Act 1985 s.3(2)(a).
9 Prosecution of Offences Act 1985 s.6(2).
10 Clause 1.1.

Justice and Environment Protection Agency (EPA). Some states exercise concurrent enforcement and control with the Coast Guard within the waters of the individual state.

Question 2:

When maritime accidents and/or marine pollution incidents occur within the waters under the jurisdiction of your State, what process of accident investigation is legally required?

Argentina

In all cases an administrative proceeding is started. In case of a maritime accident/damage it may have intervention the Administrative Court of Navegation which decides about the liability of the seafarers. In case of a maritime accident/damage also may have intervention the federal Court for eventual criminal offense (i.e., damages, homicide). In cases of incidents for contamination, in the stage of the administrative proceedings, the Courts are notified of the facts.

Australia

In respect of casualty investigation, no investigation is mandatory. Depending on the severity of the incident any one or combination of investigations may take place. The ATSB may undertake a 'no fault' type safety investigation. This does not preclude a parallel investigation by AMSA or a State marine or environmental agency investigating with a view to prosecuting for a breach of the law.

In respect of marine pollution incidents, the only obligation regarding investigation that exists is the general obligation imposed by Article 4 of MARPOL 73/78.

Bulgaria

According to art.79 of CSC Executive Agency "Marine administration": investigates each accident occurred in marine territories and in internal waters of Republic of Bulgaria; investigates an accidents occurred with Bulgarian vessels although the place of those accidents; cooperates to foreign official administrations during the investigation of high sea accidents when a Bulgarian vessels have been involved and as a result of this accidents a Bulgarian or foreign citizen death or grievous bodily harm have been caused, or a serious vessels or equipments damages have been caused and their safe exploitation have been hind; investigates the cases of substances throwing out, when these substances have caused a marine or fluvial pollution or floor pollution; investigates the cause of sinking or throwing out of vessel or vessels cargo, consisting substances causing marine or fluvial pollution or pollution of marine floor. In the end of investigation, the Executive Agency "Marine administration" issues an ascertainment act related to accidents causes.

The Minister of transport and communications issues an ordinance related to the procedure of accident investigations.

Brazil

The process of accident investigation will be taken in three different spheres: administrative, civil and criminal. It is important to note that all the processes are independent and they are taken without prejudice to one another. The Brazilian Domestic Law (Administrative, Civil and Criminal law) will be applied**.**

Canada

Maritime accidents, including those resulting in pollution incidents, are investigated by the Transportation Safety Board of Canada ("TSB") pursuant to the

Canadian Transportation Accident Investigation and Safety Board Act, which implements Canada's obligations to investigate marine casualties under the United Nations Convention on the Law of the Sea. The particular investigation process is determined by the investigators conducting the investigation and typically depends upon the seriousness of the incident. TSB has the power to conduct a public inquiry if considered appropriate, and TSB's investigators have the power, on reasonable grounds, to enter premises (including a ship), search and seize evidence and interview witnesses. TSB's mandate is to determine causes and contributing factors, but not to assign fault, and the ability of other regulatory authorities to investigate is limited while TSB's investigation is ongoing.

The Canadian Department of Transport is also likely to be involved in investigation of marine accidents. That Department, as well as the Canadian Department of Fisheries and Oceans and the Canadian Department of the Environment, all have jurisdiction to investigate a marine pollution incident, pursuant to the statutes described under question 1 above.

To a lesser degree, provincial regulatory authorities may seek involvement in the investigation of a marine pollution incident where provincial territorial interests are affected.

Chile

An Official Investigation by the Maritime Authority normally carried out by the Maritime Governor in charge of the jurisdictional waters in which the accident and/or marine pollution has occurred, subject to the final supervision of the General Director of the Marine Territory. China RIHMTA has made concrete and clear regulations on the process of accident investigation. These regulations can be listed as follows:

It stipulates the objects of accident investigation.

According to the provisions of article 10 of RIHMTA, the harbor superintendence administration shall be responsible for the investigation of the maritime traffic accidents which happen in the waters of their respective harbor areas. The maritime traffic accidents which happen outside the waters of harbor areas shall be investigated by the harbor superintendence administration of the nearest harbor or that of the vessel's first port of arrival in the People's Republic of China. The harbor superintendence administration bureau of the People's Republic of China may designate a harbor superintendence administration to carry out the investigation, if the bureau deems it necessary. The article also stipulates that when the harbor superintendence administration concerned deems it necessary, he may request relevant departments and social organizations to take part in the investigation of the accidents.

(2) It stipulates the principle of accident investigation.

According to the provisions of article 11 of RIHMTA, the harbor superintendence administration shall promptly carry out investigation upon receiving accident reports. Investigation shall be carried out in an objective and all-round manner and must not be restricted by the information provided by the parties involved in the accidents.

(3) It stipulates the method and the content of accident investigation.

According to the provisions of article 11 of RIHMTA, the harbor superintendence administration could forward the process by six different ways, including questioning the persons concerned; demanding written material and testimonial from the persons under investigation; demanding the parties involved to provide logbooks, engine room logs, wheel-bell records, radio operation logs, course records, charts, data of the vessel, functions of the navigation equipment and instruments and other necessary original papers and materials; examining certificates of the vessels, installations and the relevant equipment and certificate of the personnel and verifying seaworthiness of the vessels and technical conditions of the installations before the accident; examining the damage to the

vessels, installations and goods and ascertaining casualties of personnel and surveying the scene of the accident and collecting relevant material evidence. During the investigation, the harbor superintendence administration may use recording, photographing and video equipment and may resort to other means of investigation permitted by law. According to the provisions of article 13 of RIHMTA, in order to meet the need of investigation, the harbor superintendence administration has right to order the vessel(s) involved to sail to the spot for investigation or not to leave the said spot.

(4) It stipulates the obligations of the persons being investigated.

According to the provisions of article 12 and article 13 of RIHMTA, they must subject themselves to the investigation, honestly state the relevant circumstances of the accident and provide authentic papers and materials. They also have the obligation to sail the ship to the spot chosen by the harbor superintendence administration or not to leave the said spot.

(5) It stipulates that the personnel of harbor superintendence administration shall produce their certificates to the persons being investigated in conducting investigations.

(6) It stipulates the right of concerning organizations and personnel toward consulting, making extracts of, duplicating and borrowing the findings concerning maritime traffic accidents papered by the harbor superintendence administration for the purpose of handling cases.

(7) It stipulates the legal liability of the persons being investigated when breaking the rules set by RIHMTA.

Article 29 describes the administrative liability and criminal liability of the persons being investigated.

Croatia

Maritime accident and/or marine pollution incident investigation is led by the Maritime Safety and Marine Environment Protection Directorate of the Ministry of the Sea, Tourism, Transport and Development and involves gathering of all relevant information. Criminal investigation is carried out by Ministry of the Interior in cases of accidents with the elements of criminal charges.

Denmark

With regard to maritime accidents, which include pollution accidents in connection with bunkering vessels, the Division for Investigation of Maritime Accidents is required to investigate the accident to obtain information about the factual circumstances of the accident and to explain the cause of the accident.

As part of the investigative process, the Division for Investigation of Maritime Accidents is entitled to board vessels on proof of identity without a court order, and both the shipowner, master and chief engineer as well as anyone acting on their behalf are obliged to assist the Division for Investigation of Maritime Accidents in its investigation and to provide any information in this regard.

The investigations are generally conducted in accordance with the principles in IMO's Code for the Investigation of Marine Casualties and Incidents, but the Division for Investigation of Maritime Accidents may also request a maritime declaration to be given and heard in court at a special hearing, to which the shipowner, the master, the officers and any crew member may be summoned and will be required to give testimony.

With regard to marine pollution, which has not been caused by a maritime accident, the Admiralty is entitled to conduct random inspections of vessels to see if the rules in or issued under the provisions of the MEA a are complied with and to conduct investigations of vessels which are actually or in danger of causing pollution.

As part of the investigative process, the Admiralty is entitled to board vessels on

proof of identity without a court order, and in principle anyone on board is obliged to assist the Admiralty in its investigation since obstruction of the investigation is subject to criminal liability. Furthermore, the Admiralty is entitled to photograph, copy and seized documents or other relevant objects without compensation.

The Admiralty's inspections and investigations may not cause undue delay of or expense for the vessel.

Investigations of Maritime accidents performed by the Division for Investigation of Maritime Accidents is not per se contemplate criminal charges against any ships' personnel involved.

The purpose of an investigation is only - if possible - to adopt measures designed to reduce the risk of similar Maritime accidents in the future.

Investigations of vessels actually or in danger of causing pollution by the Admiralty does likewise not per se contemplate criminal charges against any ships' personnel involved.

The purpose or an investigation is only to prevent and control marine pollution.

Random inspections of vessels, on the other hand, are performed to see if the MEA is complied with and – if this is not the case – the offender may be reported to the police unless the Admiralty uses its authority under the MEA to issue a fixed-penalty notice which is subsequently accepted.

Investigations of potential violations of the SSA and the MEA, which are subject to criminal liability, are performed by the police either as a result of a report of a suspected crime or because the police itself has formed a suspicion.

The result of investigations performed by the Division for Investigation of Maritime Accidents and the Admiralty may be used by the police to bring criminal charges against the master, officers will crew of a ship.

Violations of SSA and MEA are punishable by fines, imprisonment for a maximum of 2 years and – in case of violation of SSA – deprivation of the right to serve as a master, navigator or engineer.

Dominican Republic

The Port Commanders/Harbourmasters as well as other staff members of the DR Navy act as a judicial police, when such incidents occur. They would start with the accident investigation, report to the Director of Port Commanders who in turn, will report to the Chief of Staff. Sometimes, when the pollution incident is significant, a commission of several DR Navy officers and the Director of Environment is appointed by DR Navy Chief of Staff to investigate the incident and render a report.

The investigations include a full interrogatory to the vessel's master and all the crew members, as well as of all witnesses, verification of the situation/pollution in situ and a preliminary evaluation of the damages, which will be passed on to the legal counsellor of the DR Navy for on forwarding to the corresponding district attorney's (D. A.) Office.

Finland

In order to establish the reason for the accident/incident a **Maritime Declaration** in Court shall be given by the Master of the Vessel by means of a court hearing in which the Master and the witnesses are heard. The FMA and public prosecution attend the court hearing.

In Finland the **Accident Investigation Board** (AIB) investigates all major accidents regardless of their nature as well as all aviation, maritime and rail accidents and their incidents.

The purpose of the investigation of accidents by the AIB is primarily to improve safety and prevent future accidents. The flow of events during the accident, its causes and

results as well as the rescue operation are dealt with in the investigation. A report is prepared on the results of the investigation. The report also presents the recommendations, which are based on the conclusions of the investigation.

In Finland the AIB is located within the Ministry of Justice.

Should the maritime declaration and/or the investigation of the AIB indicate that a crime may have been committed a **pre-trial investigation** according to the Criminal Investigations Act (L 449/1987) will be conducted.

France

It is required:

an administrative and technical inquiry ("BEA MER"),

a nautical or judicial inquiry; it depends on circumstances.

The maritime Prefect informs the public Prosecutor who after consulting experts orders the ship to go into a French port and the ship will be retained until a financial security is given.

Germany

The "Bundesstelle für Seeunfalluntersuchungen" will immediately investigate the accident and in case of damage or loss of life the German public prosecutor's office investigates.

Greece

The Port Authority is going to examine thorough the circumstances of the incident and search for the implicated persons. The process carried out in such case is at a criminal and administrative level, that is imprisonment and fine infliction. In addition, if the investigation points out that the cause of the marine pollution is attributed to a vessel's crew member of Greek nationality, disciplinary measures are taken; that is temporary deprivation of his professional license.

Hong Kong

For marine accidents:

- In accordance with Section 67(1) of the Shipping and Port Control Ordinance (Cap.313) all vessels in the waters of Hong Kong are required to report any known marine accident to MD as soon as possible and shall furnish in writing the full particulars of the accident within 24 hours.

- Under Section 59 of Cap.313, an authorized MD officer will carry out an investigation into the marine accident. He is empowered to stop and board any vessel in waters of Hong Kong, other than a warship, to obtain information / evidence for the purpose of the investigation.

For marine pollution incidents:

If the pollution (vessel or place) can be traced, MD would take oil samples from the suspected source and the polluted water area for laboratory test by the Government Chemist. If the samples were found identical by the Government Chemist, unless the discharge of the oil or mixture containing oil can be defended under Section 47 of Cap.313, MD would initiate legal action against the offender.

Italy

Competent for the administrative investigation are the Ministry of Infrastructures and Transport and, if criminal violations are envisaged, the local Procura della Repubblica, assisted by the Criminal Police. If the accident or marine pollution incident has occurred in international waters and involves an Italian vessel, should a criminal violation be envisaged, the competent Procura della Repubblica is that in whose

jurisdiction is situated the Port Authority in whose ship register the vessel in question is registered or that where notice of the criminal violation was first received.

Japan

There are two types of accident investigation: the Japan Coast Guard conducts criminal investigations and the Marine Accident Inquiry Agency conducts?investigations including those to determine causes of maritime accidents. The answers to the following questions are based on criminal investigations in Japan.

Korea

Korea Marine Police first investigates the accident for the criminal purpose. Simultaneously or later the Korea Marine Safety Tribunal undertakes investigation for the administrative purpose.

Nigeria

(i) Preliminary Investigation (PI.) is carried out by the Maritime Safety Department. The P.I Report is forwarded to the Federal Ministry of Transport for a Marine Board of Enquiry to be set up to further investigate the accident.

(ii) Federal Ministry of Transport guided by the provisions of Sections 252 (1-8) Cap 221 of Merchant Shipping Act (MSA). Law of the Federation 1990 set up a A Marine Board of Enquiry. A public notice is issued by the Marine Board of Enquiry requesting for memorandum and relevant witnesses to be present at its sitting.

Norway

The Norwegian Maritime Directorate will be responsible for initiating maritime inquiries and have the investigation power with regard to maritime accidents. The attached "marine casualty flow" chart shows the existing investigation process.

A new investigation authority "the Investigation Commission" will be established in January 2006. It will deal with major accidents. At the same time a new section in the Maritime Code (MC) section II § 472 to 493 will enter into force and regulate maritime investigations. The following answers are based upon the new provisions and procedures, which will come into force from January 2006.

According to § 472 a maritime inquiry can be held in case of a maritime accident and/or marine pollution incident involving Norwegian vessels, or foreign vessels if the incident take place in Norway, or outside Norway if the flagstate accepts this or it is in accordance with international law. The new Investigation Commission or the Maritime Directorate will have the investigation power dependent upon the seriousness of the accident/incident.

Slovenia

When the accidents and/or marine pollution incidents occur, the Direction for maritime transport starts the accident investigation on the bases of the standing orders on investigation of the maritime accidents (adopted in 1989).

South Africa

The Merchant Shipping Act No 57 of 1951 provides in chapter six for various accident investigation processes.

1. Section 264 provides that SAMSA in its discretion may hold a preliminary enquiry:

1.1 In respect of a South African registered ship whenever:-

1.1.1 An allegation of incompetence or misconduct is made against the owner, the Master or any member of the crew; or

1.1.2 A ship has been lost, abandoned or stranded, an accident has occurred on

board a ship, the ship has been damaged, the ship has caused damage to another ship or there has been loss of life or serious injury to any person on board the ship at any place whatsoever.

1.2 In the case of a foreign flag vessel whenever any of the events referred to in sub paragraph 2 above has occurred within the territorial waters of South Africa.

1.3 In respect of any ships whenever an allegation of incompetence or misconduct is made against an employer or any person on board the ship while within South African territorial waters:

1.4 In respect of a foreign flagged vessel whenever one of the events referred to in sub paragraph 1.1.2 occurs outside of the territorial waters and the ship subsequently arrives in South Africa and an enquiry into the casualty has not been held by any competent port or, in the event of a treaty ship evidence is obtainable in South Africa as to the circumstances in which the ship proceeded to sea or was last heard of.

A preliminary enquiry merely produces a report which is considered by SAMSA.

In the event that the Minister of Transport deems it necessary and regardless of whether or not a preliminary enquiry has been held a Court of enquiry can be convened to hold a formal investigation into any of the allegations referred to with regard to a preliminary enquiry.

This Court of marine enquiry only has jurisdiction over foreign flagged vessels in the event that the casualty occurs within South African territorial waters or the flagged state requests South Africa to carry out a marine enquiry.

The general practice adopted by SAMSA in respect of casualties is that they conduct a preliminary investigation into a casualty and very rarely proceed with a preliminary enquiry or a marine enquiry. This is party because SAMSA suffers from both financial and staff constraints.

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Sweden

Maritime accidents are investigated by a maritime inquiry handled by the respective maritime court, which is competent for the incident, *inter alia,* depending on where the incident occurred. The role of the Swedish Coastguard includes investigating whether a maritime accident or oil pollution has been caused by wilful misconduct or negligence.

UK

2.1 MC

2.1.1 MCA Power to Investigate

The MCA deals with suspected breaches of merchant shipping legislation and uses its powers of investigation to determine whether prosecution is appropriate.

2.1.2 Surveyors and Inspectors

MCA surveyors may be appointed under the MSA 95.[11] These surveyors have powers to inspect ships whilst in UK waters and to detain them if they are unsafe.[12]

The MSA 95 also provides for the appointment of inspectors with a wider range of powers.[13] These include powers –

– to enter any premises or board any ship in the UK if the inspector has reason to believe it is necessary

– to make examinations and investigations as he considers necessary

– to give directions requesting that the premises or ship be left undisturbed as is reasonably necessary

– to take measurements and photographs and make readings as he considers necessary

– to take samples of articles or substances and if necessary take possession of such article or substance and detain it for as long as necessary, and

– to require production of, inspect and take copies of documents.[14]

If a surveyor or inspector finds that a ship fails to meet applicable standards the MCA has power to impose various sanctions including Improvement Notices (which specify a deficiency or deficiencies to be remedied within a specified time),[15] or Prohibition Notices (which may prevent the vessel from sailing).[16]

2.1.3 Investigations and "Significant Breaches"

Where there is a "significant breach" of merchant shipping legislation the MCA's Enforcement Unit will probably commence an investigation which, in turn, may result in a prosecution. The MCA defines a "significant breach" as:

"*A contravention of Merchant Shipping or MARPOL legislation which could cause, or has caused, loss of life, serious injury, significant pollution or damage to property or the environment*." [17]

Each case is judged on its merits and therefore a 'significant breach' may arise from a major incident that clearly falls within the above definition (*e.g.* a collision or grounding) or from a failure to comply with the lower level sanctions such as formal cautions.

2.1.4 Investigation and compliance with other, related, legislation

The MCA must conduct its investigations in accordance with legislation which safeguards the rights of the individual being investigated. These include:

– The Police and Criminal Evidence Act 1984 ('PACE 1984') and its associated codes of practice.

– The Regulation of Investigatory Powers Act 2000 (RIPA). RIPA was enacted to ensure that human rights are duly respected in the exercise of certain investigatory powers (including the interception of communications; the acquisition of communications data; intrusive surveillance; covert surveillance in the course of specific operations; the use of covert human intelligence sources and access to encrypted data).

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[11] Merchant Shipping Act 1995 s.256.

[12] *Ibid.* s.258.

[13] *Ibid.* s.256.

[14] *Ibid.* s.259.

[15] *Ibid.* s.261.

[16] *Ibid.* s.262.

[17] See Jeremy Smart (Principal Enforcement Officer, MCA), *The Enforcement of Merchant Shipping Legislation and the Conduct of Criminal Prosecutions within the United Kingdom* (paper given at International Conference on Criminalisation of Masters and Seafarers, 17-18 February 2005).

– The Human Rights Act 1998 which implements the European Convention on Human Rights 1950.

– The Data Protection Act 1998.

2.1.5 The Decision to Prosecute

In deciding whether or not to prosecute, the MCA must apply a two-stage test established by the CPS:

Is there sufficient **evidence** to provide a realistic prospect of conviction? If so -

Is it in the **public interest** to prosecute?

The MCA will refer to the Code for Crown Prosecutors which gives detailed guidance on application of the above test.[18]

2.2 ***Marine Accident Investigation Branch (MAIB)***

2.2.1 MAIB Investigations

Under the MSA 95 the Secretary of State may appoint an inspector or inspectors to conduct investigations into maritime accidents involving or occurring on board any ships in UK territorial waters.[19] The MAIB has been appointed to carry out this function. It was set up in 1989 to investigate accidents in order to determine their circumstances and causes and is part of the Railways, Aviation, Logistics, Maritime, and Security Group of the Department for Transport. The current Chief Inspector of Marine Accidents is Mr Stephen Meyer who reports directly to the Secretary of State on the investigation of specific accidents.

Investigations conducted by the MAIB are governed by regulations which define its remit and powers.[20] These regulations do not confer any power of prosecution and provide *inter alia* that:

– The fundamental purpose of an MAIB investigation of an accident is to "*determine its circumstances and the causes with the aim of improving the safety of life at sea and the avoidance of accidents in the future. It is not the purpose to apportion liability, nor, except so far as is necessary to achieve the fundamental purpose, to apportion blame*."[21]

– Any accident (as defined by the regulations) may be investigated and the Chief Inspector shall decide whether or not this should be carried out.[22]

– Where the Secretary of State orders a formal investigation (see below at para 2.3), any investigation by the MAIB will be discontinued.[23]

– Public notice of the investigation may be given.[24]

– The Secretary of State may require an investigation into the further consequences of an accident to be carried out (for example on salvage or pollution aspects).[25]

– The inspector has a wide discretion as to the manner of conducting the investigation so as to achieve the fundamental purpose.[26]

– All persons required to attend before an inspector shall have their reasonable expenses of attending paid.[27]

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[18] Available online at: http://www.cps.gov.uk/victims_witnesses/code.html.

[19] Merchant Shipping Act 1995 s.267.

[20] The Merchant Shipping (Accident Reporting and Investigation) Regulations 1999 (SI 1999 No 2567).

[21] *Ibid.*, s.4.

[22] *Ibid.*, s.6(1).

[23] *Ibid.*, s.6(3).

[24] *Ibid.*, s.6(5).

[25] *Ibid.*, s.6(6).

[26] *Ibid.*, s.8(1).

[27] *Ibid.*, s.8(3).

– A report of the conclusions reached as a result of the investigation shall be made public (unless the investigation is being undertaken on behalf of a State other than the UK) in the shortest possible time and in the manner the Chief Inspector sees fit.[28] This is qualified by the requirement to serve notice of the report on certain persons/organisations (where their reputation may be adversely affected by the report) and consider their responses (amending the report where necessary).[29] The Secretary of State may also order that the report should not be made public.[30]

– The regulations also prescribe criminal offences, punishable by fines, for failure to report accidents or provide information; for false claims of ability to provide new evidence or information; for failing to preserve evidence as required by the regulations, and for irregular disclosure of information.[31]

2.2.2 MAIB Investigation Reports

When a decision is made to investigate an incident the results of the investigation will generally be made available to the public in an accident investigation report. As it is part of the MAIB's remit to improve safety for the future, such reports generally conclude with recommendations for measures to be taken to avoid a recurrence. Examples of such reports published after well known major incidents in UK waters in recent years include reports of MAIB investigations into the *Braer* and *Sea Empress* major oil spills in 1993 and 1996 respectively. At the time of writing, three reports have been published by the MAIB in 2005, namely those of investigations into accidents involving the vessels *Star Clipper*,[32] *Attilio Ievoli*[33] and *Waverley*.[34]

The MAIB also publishes a "Safety Digest" three times a year, with short reports of lessons learnt from investigations.

2.2.3 Recent developments

New regulations have been prepared which are intended to replace those summarised above. During the consultation phase, the MAIB requested comments and suggestions from various parties. Further to the receipt of responses, the MAIB has compiled a document entitled "Analysis of Responses to Public Consultation" dated January 2005. This gives details of the new draft regulations and the nature and substance of comments received (some which have resulted in 'significant amendments' and some of which have resulted in 'minor amendments').[35] The draft regulations were laid before Parliament on 24 March 2005 and are now due to come into force on 18 April 2005.

2.2.4 Relationship with other organisations

As the investigatory powers of the MAIB and MCA often overlap with those of the Health and Safety Executive (HSE), there is a Memorandum of Understanding between the three bodies as to which organisation will take the lead in a particular case.

2.3 Formal Investigations

The Secretary of State may cause a formal investigation to be held into any marine accident,[36] and regulations exist to govern the conduct of such investigations.[37] One of

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28 *Ibid.*, s.10(1).
29 *Ibid.*, s.10(2)(a) and (b).
30 *Ibid.*, s.10(7).
31 *Ibid.*, s.14(1)-(3).
32 Incident of 2 May 2004.
33 Incident of 4 June 2004.
34 Incident of 1 February 2005.
35 For further information see the MAIB's website at: http://www.maib.dft.gov.uk.
36 Merchant Shipping Act 1995 s.268.
37 The Merchant Shipping (Formal Investigations) Rules 1985 SI 1995/1001, as amended in 1999 and 2000.

the main differences between this type of investigation and MAIB investigations is that a formal investigation may result in sanctions involving the suspension or revocation of an officer's certificate. An investigation of this kind is not conducted by the MAIB but by a wreck commissioner. The regulations provide for the presentation of a report by the wreck commissioner to the Secretary of State rather than criminal proceedings.

Uruguay

After an incident, administrative proceedings are always going to take place. In pollution matters, the Coast Guard is going to act in its own. If an accident takes place in waters under the jurisdiction of our country, the Investigative Court of Maritime Accidents, a technical entity, is going to conduct an investigation of the facts.

If at any time, during those proceedings, it is found that criminal responsibility could arise from the facts, Criminal Courts are going to act.

Please also be informed that claims in tort can be filed by citizens, corporations or the Government to cover the damages arising from the incidents. Those claims are going to be adjudged by Civil Courts Please also note that those Courts can impose preliminary injunctions, or the arrest of the vessels involved.

USA

Under the assumption that the Coast Guard would be the leading investigative agency the Marine Safety Office or Marine Safety Unit of the port/area involved would be responsible for determining the level of investigation undertaken. Depending on the severity of the environmental impact of the event the Coast Guard investigators can be supplemented by personnel from other agencies such as the National Oceanic and Atmospheric Association (NOAA).

When the casualty includes factors such as collision, explosion or loss of life, the National Transportation Safety Board can become it involved and will usually perform their own investigations, hold their own hearings and issue reports that are separate and distinct from the Coast Guard.

Against that we must reiterate that the individual states (and sometimes local) governments are permitted to perform their own investigations and can bring charges separate from the federal proceedings.

Question 3:

Do your State's maritime accident and/or marine pollution investigative processes contemplate criminal charges against any ships' personnel involved and, if so what action may be involved?

Argentina

In case of maritime accidents, when there is an eventual criminal offense (i.e. damage or death) it may be started a criminal proceedings against the persons involved.

Australia

In respect of casualty investigation, the ATSB is specifically precluded from undertaking any investigation in support of civil or criminal investigation. AMSA or State marine or environmental authorities may exercise their jurisdiction, which could lead to the arrest or detention of individuals or the ship.

In respect of marine pollution, yes. Criminal sanctions exist for the requirements of MARPOL 73/78. This is mostly based on monetary penalties of varying amounts, although some State legislation provides for imprisonment in certain circumstances. The Federal MARPOL legislation and some State legislation provides for criminal sanctions

against any crew-member responsible for a pollution incident. Most State legislation is, however, limited to criminal sanctions against the owner and/or master. After an incident, administrative proceedings are always going to take place. In pollution matters, the Coast Guard is going to act in its own. If an accident takes place in waters under the jurisdiction of our country, the Investigative Court of Maritime Accidents, a technical entity, is going to conduct an investigation of the facts.

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Bulgaria

According to art.376 of CSC a captain, a pilot or a crew member, who have caused a ship wreck or average during the execution of his professional obligations, if this action is not considered as a crime, is punished on disqualification in a period from six months to two years and imposed a fine from 200 to 1000 lv. (BGN leva). This is the administrative punishment stipulated in CSC. If the action is considered as a crime, the punishment imposed is in accordance to Penal Code (PC) of Republic of Bulgaria and the procedure is according to Penal Procedure Code (PPC). The action is considered as a crime in the cases when "corpus delicti" in PC is provided, and namely: art.123 of PC - when a death is caused as a result of ignorance or failure to perform correctly some professional obligations or other legally established work, which is a source of high danger, the punishment is to imprison maximum of five years; art.134 of PC – when a grievous bodily harm or medium bodily harm is caused as a result of ignorance or failure to perform correctly some professional obligations or other legally established work, which is a source of high danger, the punishment is to put in prison maximum of three years in the case of grievous bodily harm and to put in prison maximum of two years or probation in the case of bodily harm. Aggravated crimes are also stipulated – in the cases of bodily harm caused to more than one person or when the action is accomplished in a state of intoxication. In art.136 of PC dedicated on occupational safety and health rules a punishment to put in prison maximum of three years or probation or public reprobation is stipulated. If the action is committed by negligence, the punishment is to put in prison one year or probation.

The procedure concerning institution, accomplishment, ceasing and cassation of penal procedure is stipulated in Penal Procedure Code (Chapter III) and consists of two phases – prejudicial and judicial procedure.

The preliminary proceedings have to be initiated by the procurator. The investigators are the authorities of preliminary proceedings, but the procurator could accomplish some investigation or other proceeding actions. According to Bulgarian legislation the accused has the right to defence at the moment of detention.

Brazil

The Brazilian State legal system contemplates criminal charges applied to persons responsible in some very specific cases, as case of negligence, willful misconduct or criminal malice, for example.

Canada

Investigations of maritime accidents and marine pollution incidents may result in charges being laid against a ship's personnel. While these charges are not under the Canadian *Criminal Code*, they do contemplate fines or imprisonment and could therefore be considered criminal or penal. These offences are predominantly strict

liability offences, with a due diligence defence available.

For example, in the case of a maritime accident, failure on the part of a master to render assistance after a collision may result in a fine on summary conviction or imprisonment under the *Canada Shipping Act*. Similarly, this Act makes it an offence for any person or ship to discharge a pollutant. While the typical Canadian practice is that it is the ship that is charged for such an incident, the jurisdiction to charge individual seafarers committing the discharge does exist.

The potential for prosecution of seafarers will increase if Bill C-15, amending the *Migratory Bird Convention Act* and *Canadian Environmental Protection Act*, *1999*, becomes law, as the amendments expressly contemplate prosecution of a master or chief engineer for failing to take reasonable steps to prevent pollution incidents.

Chile

No. China If the acts of the ship's personnel involved have been suspected as a crime, criminal charges should be generated in accordance with concerning laws. However, the maritime administrative organizations can not bring criminal charges against ship's personnel involved directly but transfer the case to Public Security organizations or concerning organizations in accordance with the provisions on the Transfer of Suspectable Criminal Cases by Administrative Organizations for Law Enforcement (TSCCAOLE). Then the organ having the jurisdiction of the case will bring criminal charges against those personnel.

The regulations on bringing criminal charges against ship's personnel during the investigative process could be listed as follows: article 47 of MTSL; article 15, article 18, article 29 section 2 of RIHMTA.

Croatia

Maritime accidents resulting with a death or heavy injuries of persons or marine pollution incidents are criminal acts and are as such processed further by competent authorities of the Ministry of Interior. State Attorney's Office shall in such cases detain the personnel involved and/or limit the movement of personnel.

Denmark

Investigations of Maritime accidents performed by the Division for Investigation of Maritime Accidents is not per se contemplate criminal charges against any ships' personnel involved.

The purpose of an investigation is only – if possible – to adopt measures designed to reduce the risk of similar Maritime accidents in the future.

Investigations of vessels actually or in danger of causing pollution by the Admiralty does likewise not per se contemplate criminal charges against any ships' personnel involved.

The purpose or an investigation is only to prevent and control marine pollution.

Random inspections of vessels, on the other hand, are performed to see if the MEA is complied with and – if this is not the case – the offender may be reported to the police unless the Admiralty uses its authority under the MEA to issue a fixed-penalty notice which is subsequently accepted.

Investigations of potential violations of the SSA and the MEA, which are subject to criminal liability, are performed by the police either as a result of a report of a suspected crime or because the police itself has formed a suspicion.

The result of investigations performed by the Division for Investigation of Maritime Accidents and the Admiralty may be used by the police to bring criminal charges against the master, officers will crew of a ship.

Violations of SSA and MEA are punishable by fines, imprisonment for a

maximum of 2 years and – in case of violation of SSA – deprivation of the right to serve as a master, navigator or engineer.

Dominican Republic

Indeed the above mentioned law 3003 and other laws provide for criminal charges against anyone (master and/or crew members) who dump oil, waste or debris into the waterways, ports and/or territorial waters.

There DR Navy, acting as judicial police, will send the pertinent a file to the corresponding District Attorney's office, indicating the violated statutes and charges for the D.A. to proceed with the prosecution.

Finland

Pre-trial investigation as stated above.

France

Criminal charges can be contemplated against all persons who may be held responsible of a marine accident and/or a marine pollution. The public Prosecutor may ask the investigating Magistrate to initiate investigations against any seafarer (actually the master only and the owner) and this one may be indicted (*mis en examen*) if charges may be retained against him and he will have to be at the service of the investigating Magistrate.

The examining Judge at the request of the public Prosecutor may decide the detention of the seafarer before any judgement to avoid trouble of public order or to avoid the loss of pieces of evidence and/or to avoid him to communicate with the owner but only if the seafarer incurs sentence equal or over 3 years of imprisonment ; the Magistrate will ask the Judge of Liberties to order the detention. However no detention can be ordered without a debate between the public Prosecutor and the seafarer who shall be assisted by a lawyer ; the seafer will have some delay to prepare his defence if he wishes it.

The detention before judgement must be exceptional as any person is presumed innocent in French law.

Until now, only the master of the ERIKA has been detained during fifteen days.

If the indicted seafarer is left free, the judge to prevent him from leaving France may oblige him to respect some conditions such as to give an address, to check in the police services every week. We say that the person is under judicial control.

Germany

Even though the last such incident occurred many, many years ago, criminal charges against ships' personnel are provided within German law.

Greece

Any person who may be held responsible of a marine pollution incident can be contemplated with criminal charges; his/her capacity as a vessel's crew member is irrelevant to the judicial inquiry. According to the Greek legislation there is no need to occur damage or loss of human life so as criminal punishment to be imposed; the marine pollution accident solely is legally capable of giving berth to all the lawful consequences, both criminal and administrative.

Hong Kong

All charges under Cap. 313 are criminal charges. In case that contravention of local regulations is detected during the accident and / or marine pollution incident, MD will carry out a separate investigation for prosecution.

Italy

If from the investigation it will emerge a possible criminal violation committed by the Master or by members of the crew notice must be given by the Authority that has carried out the investigation to the competent Criminal Court who will take action in compliance with the provisions of the Code of Criminal Procedure.

Japan

Personnel involved in cases as listed below will be subject to criminal punishment under the provisions of the Penal Code.

1. To obstruct marine traffic by damaging or blocking a waterway or a bridge
2. To endanger the traffic of a vessel by damaging a lighthouse or buoy or by any other means
3. To capsize, sink or destroy a vessel in which a person is present
4. To endanger the traffic of a vessel or to capsize, sink or destroy a vessel through negligence

In addition to these cases described above, the crew involved in the discharge of oil from a ship in sea areas may be punished for violation of the provisions of the Law Relating to the Prevention of Marine Pollution and Maritime Disaster, depending on the incident.

Korea

Yes, criminal charge is applicable. First, investigation by marine police is carried out and then the person involved in the accident is indicted by the prosecutor.

Nigeria

The Marine Board of enquiry at the end of the exercise brings out a report recommending what action/charges for the State to execute against any ship personnel involved in the Maritime accident and or it is the duty of the state to initiate criminal charges against erring ships personnel.

Norway

According to new provisions in our Maritime Code No, the investigation authority shall not contemplate civil or criminal charges (MC § 473)

Slovenia

Only the master of the vessel and his substitutes can be charged for the criminal act if the vessel by the infringement of the law causes a serious pollution of the environment and the people lives are put in danger and the environment is seriously damaged. (Slovenian Criminal Act)

South Africa

A Court of marine enquiry may cancel the Certificate of Competency of service of the Master or member of the crew, or suspend it for a stated period or prohibit his or her employment in any stated capacity in a ship for a stated period or impose a fine not exceeding R2 000 (US$300) upon that person or reprimand that person. This power is restricted to South African flagged ships or ships registered outside of South Africa, but only if they trade solely along the South African coast.

The Marine Pollution Control and Civil Liability Act no.5 of 1981 relating to the protection of the marine environment from pollution by oil and other harmful substances stipulates that contravention of certain of the provisions of that Act constitutes an offence, which offence attracts a fine of up to R200 000 (US$30 000) or a period of imprisonment up to 5 years, or both the fine and imprisonment.

The most severe of these penalties is reserved for the following offences:

1. Discharge of an oil from a ship, tank or an off-shore platform unless such discharge was for the purposes of securing the safety of the ship, preventing damage to the ship, or of saving life and the discharge of the oil was a necessary and reasonable step to take in the circumstances. Or if the oil in question escaped from the ship as a result of damage to the ship and all reasonable steps were taken to prevent or reduce the escape of the oil, or the oil in question escaped by reason of leakage, and neither the leakage nor the delay in its discovery was due to lack of any reasonable care. The onus of proving any of the exemptions is on the accused.
2. Entry or departure from a South African port carrying more than 2000 tons of oil in bulk as cargo and not holding a CCL Certificate.
3. Wilfully failing to comply with an order or requirement of SAMSA relating to unloading, transferring or disposing of any harmful substance.
4. Wilfully failing to comply with an order of SAMSA relating to harmful substances involved in a salvage operation.

The Marine Pollution (Prevention of Pollution from Ships) Act no. 2 of 1986 which gives effect to Marpol 73 and the 1978 Protocol, incorporates the text of Marpol 73 and 78. The Act provides that any person who contravenes any provision of the Act or the Convention is guilty of an offence.

The owner and the Master of a ship that has not complied with the requirements of the Act and the Convention are each guilty of an offence. The Act further provides that no person is guilty of an offence if he or she can show that he or she took all reasonable steps to ensure that the provisions of the Act and the Convention were complied with. If convicted of an offence, the person shall be liable to a fine not exceeding R500 000, or to a period of imprisonment not exceeding 5 years or to the fine and such imprisonment.

Sweden

Crew members may be held liable under Swedish criminal law. The penalty is either a fine or imprisonment depending on whether the maritime accident was caused by wilful misconduct or negligence. Oil pollution in the Exclusive Economical Zone can only be subject to a fine.

UK

3.1 Jurisdiction

The English courts will exercise jurisdiction over offences alleged to have taken place in the UK, including those alleged to have been committed by or on board vessels within UK territorial waters (whatever the flag of the ship or nationality of the accused).[38] They also have jurisdiction in respect of offences committed on board British ships on the high seas (by an individual of any nationality) and in relation to offences committed by a British citizen in a foreign port or harbour.[39] Otherwise they do not have jurisdiction over offences alleged to have been committed outside England and Wales, even if the accused is a British subject.[40]

3.2 Investigation and Prosecution

The CPS and other prosecuting authorities such as the MCA and EA have powers to investigate breaches of merchant shipping legislation and, where appropriate, make a decision to prosecute. Where prosecution is deemed appropriate, the proceedings will be conducted in the same way (through the adversarial court system) as non marine offences.

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[38] Territorial Waters Jurisdiction Act 1878, s.2.
[39] Blackstones Criminal Practice 2005, para A8.12.
[40] *Harden* [1963] 1QB 8.

Uruguay

In case of deaths or injuries Criminal Courts are called to act, and they are able to indict those that prima facie are found guilty, and put them in prison. Nobody can be put in prison during or following pollution investigative processes because those proceedings are of an administrative nature.

We have to underscore that in the above mentioned administrative pollution processes, fines can be imposed to the Owners/ Operators of the vessels involved, and the ships can be detained, and not allowed to sail from Uruguayan Ports, till bonds or guarantees are established to cover the fines, and the cleanup costs.

We have to point out that the fines that the Maritime Authority can impose for pollution offences vary from 1.000 to 10.000 U.R., plus cleaning costs. The above mentioned value is an artificial value that changes every months. Present value of said unit is slightly over ten American dollars.

USA

In the current legal environment following September 11, 2001 the Coast Guard seemed to have abandoned their matrix for a determination on which pollution incidents warranted criminal investigation. Wide discretion is now granted to the Captain of the Port as well as the Department of Justice in conjunction with the Coast Guard's Criminal Investigation Division and other agencies with potential jurisdiction on whether to bring criminal charges. Again as stated in the prior questions, individual states have the ability to bring such charges on their own against ship personnel. Evidence gathered in any casualty investigation can be used by prosecutors in criminal proceedings.

Perhaps ironically there sexist for seamen bearing U.S. licences a noncriminal sanction of licence suspension or revocation which is not available for foreign seamen, thereby making a criminal action against foreign seamen more likely in potentially less egregious situations.

Question 4:

If there is no criminal process, what other investigative process is utilized?

Argentina

See reply to questions 2 and 3. Australia In respect of maritime safety, there are parallel processes under which safety investigations and investigating with a view to prosecution are separate processes.

In respect of marine pollution, Australian legislation is based on a criminal process.

Bulgaria

In the cases when the action is not considered as a crime, the determining infringement and the imposing administrative sanctions are according to Administrative Violations and Sanctions Act. The administrative procedures themselves are stipulated in administrative penal regulations in CSC.

A ship-owner, who is responsible in a case when his vessel is shipping in infringement of occupational safety and health requirements, is punished on infliction of a fine or pecuniary sanction from 2000 to 50 000 Bg leva (art.374).

crew member, who is exercising his professional duties after using alcohol or other narcotic substances, dully approved, is punished on disqualification in a period from six months to one year (art. 375). In the case of repeated offence the punishment is a disqualification in a period from one to two years. A captain who has not exercise fir obligation to declare the transport or has not observe the rules related to transport of dangerous cargos or other cargos when this declaration is mandatory, is punished on

imposing of fine from 1000 lv to 5000 lv, if the action is not considered as a crime (art. 377).

The CSC infringements have to be determined with acts issued by inspectors of Executive Agency "Marine administration". There is an obligation to institute an act in the case of written notice to the Executive Agency "Marine administration" issued by the captain and related to infringements of crew members during the shipping. The penal provisions have to be issued by the Executive Director of Executive Agency "Marine administration" (or by authorized official). In the penal provision may be also determined a pecuniary compensation to cover all damages caused. The penal provision could be claimed by the ship-owner in the part consisting of compensation. It is delivered at the moment of it's delivery to the captain.

Brazil

Administrative and civil investigative processes.

Canada

While the investigative processes would be those identified under question 2 above, the prosecution for offences as described under question 3 above would be conducted through the Canadian court system in the same manner as a more conventional criminal prosecution.

Chile

The Official Investigation in charge of the Maritime Authority, as a result of which the Authority may apply fines on the shipowners and/or the ship's personnel involved.

China

In the investigative procedure, the maritime administrative organizations can not bring a criminal charge against the ship's personnel involved but transfer the case to public security organizations and concerning organizations according to the provisions on TSCCAOLE. Then the organ accepting the case has obligations to investigate the case.

Croatia

In both cases mentioned above maritime accident investigation is utilized.

Denmark

N/a

Dominican Republic

Please kindly refer to reply to questions 2 and 3.

Finland

See above.

France

Technical inquiries may be done by «BEA MER» in case of marine accident in the same time as criminal inquiry.

Germany

The investigative process mainly focuses on the accident and/or marine pollution and future prevention.

Greece

As it is aforesaid, administrative process, which is legislatively orientated to fine imposition.

Hong Kong

Civil claim will be initiated against the offender for the cost incurred as a result of the accident, such as removal of wreckage, damage made to port facilities or clean up cost in case of a pollution incident.

Italy

Normally the initial investigation is carried out by the Port Authority, first through a Summary Enquiry and then through a Formal Enquiry who will be competent to sanction the possible administrative violations. An additional Authority that may be competent is the Prefecture having jurisdiction on the relevant area.

Japan

No procedure is utilized except as referenced in Question 2 above. Korea N/A

Nigeria

(i) In cases of Marine Accident the family of the deceased person(s) S.) on the identification of the ships personnel responsible may bring a criminal action on their own. Where the Marine personnel is a foreigner the owner of the vessel will be sued.

(ii) in cases of Marine Pollution: - The state has the right to sue the owners of the ship or their agents. Norway The police have an independent right to a carry out a criminal investigation process.

South Africa

As mentioned in response to question 2, the general practice is for SAMSA to carry out a preliminary investigation into any casualty that occurs along the South African Coast. To our knowledge the only enquiries that have taken place in the last 20 years relate to incidents involving loss of life on South African flag ships.

Sweden

See above.

UK

There is the possibility of criminal proceedings (see answers to questions 2 and 3 above) but, as explained in the response to question 2, there is also the possibility of an MAIB public inquiry or of a 'formal investigation' being ordered by the Secretary of State. Uruguay As it has been previously informed, administrative proceedings are going to take place following accidents, or marine pollution incidents.

USA

Assuming that question three response answers this question. However, in noncriminal matters the NTSB and/or Coast Guard have administrative responsibilities for performing casualty investigations. State and local authorities can also exercise their concurrent authority to investigate.

Question 5:

Does your State's investigative process permit detention of seafarers and, if so, under what circumstances and with what safeguards?

Argentina

Only in the case of a criminal proceedings under the circumstances pointed out in Nº 3, the Judge may decide the detention, once certain legal conditions were fulfilled. Australia Yes. Australia's primary concern is to ensure that a person charged with an offence is present in Court to answer the charges. To achieve this, Australian Courts will set an appropriate bail or bond, or will detain a person in custody if it is considered necessary. In the Australian legal system, seafarers charged with an offence are treated the same as any other person. Court decisions regarding bail, bond or detention are subject to appeal.

Federal and some State MARPOL legislation specifically provides for detention of ships for the purposes of investigating pollution incidents, as provided for in UNCLOS. Vessels are normally released promptly on the posting of a bond.

Bulgaria

The CSC consists of special legal regulation of cases related to ships detention and to captain competences. According to art. 74 of CSC the Executive Agency "Marine administration" could detent a ship in the port and in a period of 24 hours to make an investigation of the ship because of safety reasons. In the case that the ship is considered as not able to shipping or to realize the aim of ship-owner, the Executive Agency "Marine administration" has to prohibit the ship's exploitation and to specify the defects needed to be eliminated. The shipping safety rules and the surveillance on the fishing vessels in internal water ways of Republic of Bulgaria are also applicable to the foreign-flag vessels unless an international agreement those Bulgaria is a contracting party, stipulates otherwise.

According to art. 89, p.3 of CSC the captain has the right to enterprise all measures needed if a person on board does not observe his legal orders. If a member of personnel on board endangers the vessel's safety or the safety of other persons and properties there in, or this action is considered as a crime according to Penal Code of Bulgaria, the captain has the right to detent the seafarers and other persons in question in isolated detention rooms.

According to art. 90 of CSC, when during the shipping a Penal Code crime was perpetrated, the captain have to execute the functions of investigator and have to observe the rules of PPC and the vessels investigation instruction. This instruction is approved by the Chief - Prosecutor and by the Minister of transport and communications of Bulgaria. The captain has the right to detent the suspected person and to surrender him to the authorities in the first Bulgarian harbor. When a crime is committed on board during the stay in Bulgarian harbor, the captain has to surrender the suspected person to the respective authorities.

In accordance with the General rules of PPC the investigator could detent the suspected person without a prosecutor's order when the crime is considered as a crime of general nature and the preliminary procedure is mandatory (for ex., when the suspected person was detained during the crime or after the crime commitment). In the detention provision the investigator should motivate the detention and has to advise the procurator no later than 24 hours (art. 202 of PPC). The procurator has to approve immediately or to repeal the detention. If the detention was made because of grievous crime of a general nature, the prosecutor may prolong this time limit to 3 days. In the case that during this period a legal action is not initiated, the investigator has to exempt the detained person.

According to art. 206 of PPC the detained person has the rights as follows: to know the reason of detention; to give explanations; to make references, notices or objections and to claim the prosecutor's provisions/the investigators' provisions when they harm his rights and legal interests.

According to art. 51 of PPC the accused has the rights as follows: to know the reasons and the proofs of his accusal; to give explanations; to present proofs; to take part in the penal procedure; to make references, notices or objections; to have a last plea at the bar; to claim the tribunal acts and acts of investigation authorities; to have a defender and to have a last plea. The defender could participate during the investigation process on demand of the accused.

Brazil

Yes, in some very specific cases of criminal process. For further information, please see reply to question 6 below.

Canada

There is no provision for the detention of seafarers as witnesses other than for purposes of participating in TSB interviews. Provision does exist for detention of seafarers who are charged with offences, although this process has been rarely used, as most pollution prosecutions have been of the vessel itself. The proposed amendments in Bill C-15 would expressly empower arrest of seafarers under the *Migratory Birds Convention Act* or the *Canadian Environmental Protection Act*, 1999 where there is reasonable belief an offence has been committed.

With respect to safeguards, Canada has a Charter of Rights which includes due process rights that would apply to detention of a seafarer charged with an offence. On being arrested a seafarer has the right (a) to be informed promptly of the reasons for arrest (b) to retain counsel without delay and to be informed of that right and (c) to have the validity of the detention determined by way of *habeas corpus* and be released if the detention is not lawful.

In many of the provisions of the *Canada Shipping Act* involving interference with a foreign ship, particularly for instance involving violations of international conventions or an incident outside Canada's territorial sea, notification of the foreign flag state is contemplated. The proposed amendments to the *Canadian Environmental Protection Act*, *1999* in Bill C-15 similarly provide for notice to a foreign state and require the consent of the Minister of the Environment.

Chile

No.

China

According to Chinese legislation, if the act of ship's personnel has been suspected as a crime, the maritime administrative organizations will transfer the case to the concerning organizations. The personnel involved may be detained if it meets the need of the provisions of Criminal Procedure Law of the People's Republic of China (CPL). The legislation has not made any provisions on whether the maritime administrative organizations could detain the ship's personnel involved during the investigative procedure. The existing legislations only provides that the ships may be detained before the maritime administrative organizations finishing maritime investigation.

Croatia

Detention is permitted in cases of justified doubt in criminal act as provided by the Act on Criminal Proceedings. Modality of the detention is defined by the Court.

Denmark

Although seafarers may be required to assist the Division for Investigation of Maritime Accidents and the Admiralty in their investigations and may be required to give testimony of a special court hearing is mentioned under item 2.1 above, the investigative process headed by the Division for Investigation of Maritime Accidents and the Admiralty do not permit the detention of seafarers, only vessels.

When investigating a potential crime, the police may, however, arrest and detain seafarer charged with the crime for up until 24 hours, but not for a longer period, unless a court order is obtained.

The court may allow the arrest and preliminary detention to be extended for a maximum of three times 24 hours, that detention for a longer period of time can only be ordered if – among other things – the offences punishable by imprisonment for 18 months or more and not if the purpose of detention can be achieved with less radical means (see item 13 below for more details).

As indicated under item 3 .3 above, some violations of SSA and MEA may be punished by imprisonment for up until 2 years, e.g. in cases where a master has consumed alcohol to such an extent that the master is no longer capable of carrying out his duties in a fully adequate way. In these cases, detention of a charged offender is therefore a possibility.

Persons who are not charged with the crime may not be detained.

Dominican Republic

Yes, they do, under criminal charges for polluting territorial waters. Finland According to the Coercive Measures Act (L 450-1987) 3 § the suspect may be detained provided that he (as a main rule) is suspected on probable cause for the offence.

France

Yes, see answers to question 3.

Germany

Yes, the German investigative process allows detention but only in case of risk of escape and severe liability.

Greece

According to the provisions of the Greek Code of Criminal Procedure, when an investigative criminal process is carried out, the Public Prosecutor has the right to impose on the defendant a string of "liberty limitation conditions" such as the interdiction to leave the country or the obligation to be present before of the judicial authorities. The above imposition can only takes place if serious indications of implication of the defendant emerge. Detention is possible when it is estimated by the authorities that the accused person is likely to escape. ("risk of escape").

Hong Kong

During the investigation process, should there be likelihood that a seafarer suspected to have committed a serious offence (with which imprisonment sentence might be warranted on a first conviction) may leave Hong Kong, assistance from the police may be sought to have the seafarer arrested and brought to court pending further investigation and/or trial. Even when a seafarer is being arrested, police bail ought to be granted unless the offence appears to be of a serious nature and/or the office in charge reasonably considers that the person ought to be detained (section 52(1) of the Police Force Ordinance Cap.232 refers).

In case no police bail is granted, the seafarer is to be brought before a magistrate

as soon as practicable, or is any event within 48 hours (section 52(1) of Cap.232 refers).

Once the case is brought to court, the seafarer shall be admitted to bail with such conditions which are considered necessary to secure his attending court in future (section 9D of the Criminal Procedure Ordinance Cap.221 refers). Bail might be refused should there be substantial grounds for the court to believe that the seafarer would (a) fail to surrender to custody as the court may appoint; (b) commit an offence while on bail; or (c) interfere with a witness or pervert or obstruct the course of justice (section 9G of Cap.221 refers).

Italy

Detention of seafarers may take place in the same situations in which detention of any person is permitted under the rules of the Code of Criminal Procedure. See response to Question 13. The safeguards are those generally provided by the Code of Criminal Procedure in case an order of detention is issued.

Japan

Seafarers would be detained based on general criminal procedures, as no special procedures exist to detain seafarers. No person shall be apprehended except upon a warrant issued by a competent judicial officer which specifies the offense with which the person is charged, unless he is apprehended while the offense is being committed. The suspect may be arrested where there exists any reasonable cause to suspect an offense has been committed. No person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel; nor shall he be detained without adequate cause; and upon demand of any person such cause must be immediately shown in open court in his presence and the presence of his counsel. The accused or the suspect may appoint a counsel at any time. The accused or the suspect in custody may, without any official being present, have an interview with, and deliver to/receive documents or articles from his/her counsel or a person who is going to be his/her counsel, upon the request of the person entitled to appoint a counsel.

(See also the answer to question 13.)

Korea

Yes, seafarers can be detained by the marine police and prosecutor up to maximum 20days until he is officially indicted. The detention is only allowed by the permission (habeas corpus) from the judge with an emergency exception.

Nigeria

There are some circumstances where the police can detain seafarers under "Holding Charge" e.g. illegal lifting of oil, illegal carrying of arms etc. They have to be charged or arraigned before a court within 48 hours. In which case, they will have access to their legal representatives.

Norway

Yes, according Criminal Procedure Act § 171 any person who with justified cause is suspected of one or more acts punishable to statute with imprisonment for a term exceeding 6 months, may be arrested when e.g.: there is reason to fear that he will evade prosecution or the execution of a sentence or other precautions, there is an immediate risk that he will interfere with any evidence in the case, e.g. by removing clues or influencing witnesses or accomplies, etc.

According to the Criminal Procedure Act § 181,the prosecution authority may

forgo an arrest or release a person on condition that he promises to present himself to the police at specified times or promises not to leave a specific place. The same applies when the suspect consents to other conditions such as handling over his passport, etc.

Slovenia

In the case of criminal act the detention of seafarers is permitted and they enjoy all the rights of the detainee established by the provisions of the Slovenian process criminal act.

South Africa

Any person charged with a criminal offence may be arrested.

Safeguards are set out in Section 35 of the Constitution which enshrines, amongst other things, the following rights:

1. To remain silent;
2. To be informed promptly of the right to remain silent and of the consequences of not remaining silent;
3. Not to be compelled to make any confession or admission that can be used in evidence against the person;
4. To be brought before a Court as soon as reasonably possible but not later than 48 hours of the arrest or the end of the first Court day after the expiry of the 48 hours;
5. To be charged at the first Court appearance after being arrested or to be informed of the reason for the continued detention or to be released;
6. To be released from detention if the interest of justice permit.

Every accused person has the right to a fair trial which includes the rights to:

1. Be informed of the charge with sufficient detail to answer it;
2. Have adequate time and facilities to prepare a defence;
3. A public trial before an ordinary Court;
4. Have the trial begin and conclude without unreasonable delay;
5. Be present when being tried;
6. To chose and to be represented by a legal practitioner;
7. Have a legal practitioner assigned to the person by the state and at the state's expense;
8. Be presumed innocent, to remain silent and not testify during the proceedings;
9. To lead and challenge evidence;
10. Not be compelled to give self incriminating evidence;
11. Be tried in a language that the accused person understands or, if that is not practical, to have the proceedings interpreted in that language.

People detained have the same rights along with the rights to communicate with and be visited by their spousal partner, next of kin, chosen religious counsellor and chosen medical practitioner.

Sweden

Where oil pollution in Swedish territorial waters is considered to have been caused by wilful misconduct a crew member may be sentenced to prison. During the investigation a crew member may also be taken into custody.

UK

The UK's investigative process does permit the detention of seafarers (by way of arrest and subsequent detention). This may only be carried out, however, in certain circumstances and in accordance with strict safeguards as follows:

5.1 Arrest

Under English law, arrest is considered to be the "beginning of imprisonment" and

must therefore be clearly justified by an express rule of law.[41] If the arrest is not based on the proper exercise of a specific legal power it is unlawful and will constitute the tort of false imprisonment.

In some cases an arrest is lawful only if a court order has first been obtained to authorise the arrest. This order, known as an arrest warrant, may be issued by a magistrates' court or the Crown Court. Applications are normally made to a magistrates' court, which may issue a warrant only where the alleged offence is classified as 'triable on indictment',[42] or punishable with imprisonment, or where the address of the accused cannot be sufficiently established for service of a summons. In certain other particular circumstances warrants may be issued by the Crown Court, e.g. where an indictment has been signed but the person charged with the offence has not been committed for trial.[43]

In certain cases the police may make an arrest without a warrant. However this power is limited to cases where they have reasonable cause for believing that the accused has committed, is committing, or is about to commit, and an 'arrestable offence'.

Arrestable offences are normally of a serious character and generally do not include most offences involving breach of merchant shipping legislation. However, in exceptional cases, e.g. where a maritime accident gives rise to possible charges of manslaughter, an arrest without warrant is possible.

In other cases an arrest warrant may be obtained in relation to potential merchant shipping offences which are punishable by imprisonment if the facts are sufficiently serious. An example is the offence under the MSA 95 of conduct endangering ships, structures or individuals.[44] This consists of any deliberate act or omission, any neglect or breach of duty, or any act or omission whilst under the influence of drink or any drug, which causes or is likely to cause the loss or serious damage to a ship or its machinery, or the death of or serious injury to any person.[45] This offence is not, incidentally, established by proof of conduct causing or likely to cause pollution, but where pollution results from a casualty involving serious damage to a ship, that damage may justify prosecution (and possibly arrest) for such an offence.

An arrest must be carried out in a particular way in order to be lawful – for example an individual must be informed of the facts and grounds of arrest.

5.2 Detention and treatment of suspects (PACE Codes of Conduct)

The Police and Criminal Evidence Act 1984 (PACE), and accompanying codes of conduct, provide safeguards to protect detained suspects. The leading principle is that all persons in custody must be dealt with expeditiously and released as soon as the need for detention has ceased to apply.[46]

PACE provides that only an arrested person may be kept in police custody and that such detention must comply with safeguards set out in the Act.[47] A person who voluntarily attends at a police station to assist in an investigation is entitled to leave at will unless he is arrested. The safeguards prescribed by the Act and the Codes include the following requirements:

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41 *Christie v Leachinsky* [1947] AC 573, 600.

42 A trial on indictment takes place in the Crown Court before a judge and (if the accused pleads not guilty) a jury.

43 Supreme Court Act 1981.

44 Merchant Shipping Act 1995 s.58.

45 *Ibid*., s.58(2)-(3).

46 Police and Criminal Evidence Act 1984, Code C, para 1.1.

47 Police and Criminal Evidence Act 1984 s.34(1). The safeguards are set out in Part IV of the Act.

– A custody officer (at least the rank of sergeant) is responsible for detention conditions. The custody officer cannot be a police officer who has been involved in the matter under investigation. A custody officer is entitled to assume that the arrest of a person was lawful.[48]

– A custody record must be opened in respect of the person arrested. This may later be examined by the arrested person or legal representative.

– The custody officer must inform the arrested person of his rights to have someone informed of his arrest, to consult privately with a solicitor, and to consult the appropriate Codes of Practice. He must also inform the arrested person that independent free legal advice is freely available.

– The arrested person must be given a written notice of his rights (including a right to a copy of the custody record) as well as a caution that he is not obliged to say anything but that what he says may be taken down and given in evidence.

– All interviews (by police and other prosecuting authorities such as the MCA) must be carried out in accordance with the PACE and Code C, otherwise the evidence obtained may be inadmissible.

– Code C provides safeguards *inter alia* with respect to detention and interrogation including: conditions of detention, care and treatment of detained persons, interpreters and reviews of detention.

– A custody officer must decide as soon as practicable after the suspect arrives at the police station whether he has sufficient evidence to charge the suspect with the offence for which he is arrested.

– Unless an extension of time for detention has been authorised (for example in the case of a serious arrestable offence such as murder or rape) a suspect may not be held in detention without charge for more than 24 hours. If, after 24 hours he has not been charged he must be released either with or without bail. He cannot then be rearrested without warrant for the same offence in the absence of new evidence.

5.3 Citizens of independent Commonwealth countries or foreign nationals

Additional protection is given to citizens of independent Commonwealth countries or foreign nationals.[49] Such individuals have the right to communicate at any time with the appropriate High Commission, Embassy or Consulate. They must be informed of this as soon as practicable, and of the right, upon request, to have their High Commission, Embassy or Consulate told of their whereabouts and grounds for their detention. If this latter request is made it must be acted upon as soon as practicable. Consular officers are also able to visit their nationals in police detention to talk to them and, if necessary, arrange for legal advice. These visits are to take place outside the hearing of a police officer. Additionally, a record will be made when a detainee is informed of the above rights and of any communications with a High Commission, Embassy or Consulate.

5.4 The Human Rights Act 1998

The Human Rights Act gives effect in UK domestic law to the European Convention on Human Rights. All action taken with respect to a suspect must therefore comply with the rights enshrined in the Convention.

5.5 Case studies

There have been various examples in recent years of seafarers who have been prosecuted under English criminal law and who have been subject to the criminal law procedures outlined above:

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[48] *DPP v L* [1999] Crim. LR 752.

[49] Police and Criminal Evidence Act 1984, Code C.

– *Vessel: Dutch Aquamarine:* On 9 October 2003 the Dutch flagged chemical tanker, *Dutch Aquamarine* (4671 gt) collided with the 1009 gt vessel *Ash,* running into the stern of the smaller vessel. The damage sustained by the *Ash* was such that she sank quickly, bow first, resulting in the death of the Master of the *Ash.* The Second Officer of the *Dutch Aquamarine* was the officer on watch at the time of the collision, and the MCA's Director of Operations stated that his standard of watch keeping "fell so far below the level required that this collision was inevitable." Although the Second Officer pleaded guilty to a breach of the MSA 95 (endangering his vessel) but was also found guilty of manslaughter and sentenced to 12 months imprisonment.

– *Defendant: Adam Cowell:* The defendant was found to have forged certificates as an Efficient Deck Hand, and for Proficiency in Survival Craft and Rescue Craft, and as a result to have sailed in a position for which he was not qualified. He pleaded guilty to two offences of making false instruments and one offence of obtaining pecuniary gain under the Forgery and Counterfeiting Act 1981. He also pleaded guilty to five specimen charges of sailing in a position for which he was unqualified,[50] with another nineteen of the same offences being taken into consideration. The defendant was sentenced on 14 October 2004 The Court considered a custodial sentence but, in light of the defendent's previous good character and guilty plea, restricted the penalty to one of community service, imposing the maximum community service order (240 hours) without any reduction for mitigating circumstances.

– *Defendant: Neville George Young.* At a court hearing on 9 June 2003, Young was convicted on 4 charges of possessing and using forged qualifications and sailing as a senior officer on a British Ship without holding a valid Certificate of Competence. He was sentenced to 9 months imprisonment and fined £500 for sailing as an unqualified Officer. His Honour Judge Brown said: *"Forgery is a very serious offence and this act could have put other sea-fares' lives at risk. Only a custodial sentence is justified".* Having noted the mitigating facts, however, Judge Brown suspended the sentences for 2 years and ordered that they run concurrently.

– *Defendant: Jerzy Pawluk, Chief Officer of MV Roustel.* On 27 January 2000 the defendant was convicted of conduct endangering ships, structures or individuals.[51] He had admitted to drinking on watch, and leaving the bridge to go to bed. The watchkeeping alarm was disabled and the ship was set on a landward course. The defendant was sentenced to 12 months imprisonment.

Uruguay

1. As it has been previously informed, administrative proceedings are going to take place following accidents, or marine pollution incidents.

USA

Both federal and state law permit the detention of those individuals who would be considered "material witnesses" or "persons of interest" through the issuance of a subpoena ordering their sworn testimony and/or grand jury appearances. As these individuals are not being criminally charged at the time, the usual constitutional safeguards are not triggered. In many instances instances separate criminal counsel is appointed for the crew members by the owners or the court may appoint a lawyer at public expense to protect their interests. Often court-appointed lawyers are not well versed in maritime matters. There have been occasions where the crew members have

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[50] Contrary to the Merchant Shipping Act 1995 s.52.
[51] Contrary to the Merchant Shipping Act 1995 s.58.

been required to stay within the good jurisdiction for months while awaiting the various court proceedings. Some crew members have been held in jail, others have been kept in hotels at the owners expense and others have been left to provide their own places to stay. In one recent case the news media reported that detained crewmen are sleeping on the floor of a church.

Question 6:

If seafarers are required to be present for an investigation, trial or other hearing will they be permitted to leave your State until such investigation, trial or other hearing takes place?

Argentina

If it is the case of an administrative proceeding the permission to leave of the seafarer is not stopped and only may happen whether there is a criminal proceedings in the circumstances pointed out in Nº 3.

Australia

In most cases yes, subject to compliance with any bail or bond imposed by the Court.

Bulgaria

The analysis of PPC provisions leads to conclude that the accused could leave the country during the investigations/trial process, when that could not hinder to discover the objective evidence. The conclusion above mentioned is "per argumentum" (lat.) from art. 87, p.2 of PPC. According to this provision the accused could not be interrogated by delegation or by video-conference, unless the cases when the accused is abroad and that could not hinder to discover the objective evidence. Concerning the participation of the accused in the court session (the second phase of trial process), according to art. 268, p.3 of PPC the action could be tried in the absence of accused if: the accused was not find in the address mentioned or the address was changed and the respective authorities were not dully advised; his residence in the country is not known and after dully wanted it was not find; the accused is abroad, his residence is not known or he could not be subpoenaed because of other regions, or he was subpoenaed in regular way, but he was absent without good reasons.

Brazil

In the penal sphere the answer is positive (after the seafarers' depositions to police authorities), unless there are specific circumstances to the contrary, such as when the wrongdoer is caught *in flagrante delicto* or in case of preventive detention in order to protect the collection of evidence by the police or public prosecutors.

Concerning civil sphere seafarers are prevented from leaving the country only if it is necessary to carry out an anticipated discovery with a view to preserving evidence in respect of a casualty/incident. But in normal circumstances this is achieved (by means of collection of relevant documents, deposition of seafarers, etc., in preventive judicial proceedings) in just a few days.

Finally, with regard to administrative sphere, seafarers must remain in the Brazilian territory as long as necessary for the Maritime Authority (through local Port Captaincies) to complete their inquiries on the accident. Again, normally, this is achieved also in a few days**.**

Canada

There is no provision for a seafarer to be compelled to remain in Canada pending a hearing or trial if his or her role is solely as witness. However, if a seafarer is charged with contravention of Canadian law, then the Court will typically fix the terms of the individual's release pending trial, often involving the posting of bail, and it is doubtful the seafarer would be permitted to leave Canada unless the Court is satisfied the seafarer will return to Canada for the trial.

Chile

As soon as the accident occurs, the Maritime Authority will start the Investigation and seafarers will be required to declare before the Maritime Prosecutor in charge. After their declaration, they will be permitted to leave out State.

China

(1) About seafarers' being required to be present for an investigation

According to the provisions of article 29 of RIHMTA, if the seafarers refuse to be investigated or unjustifiably obstructed and interfered with the investigation by the harbor superintendence administration, the harbor superintendence administration could take administrative penalties on the persons concerned. If their acts have constituted a crime, the judicial organizations shall investigate their criminal responsibility according to law. Furthermore, according to the provisions of article 5 and article 22 of Temporary Regulations on Investigation Process of Severe Accidents (TRIPSA), any part or person should not illegally interfere with the process of investigation. Any part or person should not interrupt and interfere with the regular work of the accidents investigating group.

From the above provisions, it can be reasonably estimated that the seafarers are not allowed to leave china if the acts could interfere with the subsequent investigative process or other processes

(2) About seafarers' being asked to be present for a trial

If the seafarers' acts have been suspected as crimes, then they are not allowed to leave China from register to the court being held.

Croatia

Seafarers are permitted to leave the country.

Denmark

Even if they seafarer is required to be present for an investigation, trial or other hearing, the seafarer cannot be prevented from leaving Denmark, unless the requirements for detention had been met, in which case the authorities may choose to deprive the seafarer of his passport.

Moreover if they seafarer has been summoned to a court hearing as a witness and fails to appear, the court may order the police to take the seafarer into custody and escort him to the court hearing.

Dominican Republic

They will not be permitted to leave during the preliminary interrogatories / investigation, but once the same is completed, if they* *(Corr. The Authorities)* consider that they* *(Corr. there)* are no indication of their involvement in the incident, they are allowed to leave the country. If others are found to be involved, criminal charges will be placed against them, and those* (*Corr. they)* can only be permitted to leave the country against presentation of a bail bond.

Finland

According to the Coercive Measures Act (L 450/1987) 3 § subsection 4) the suspect may not be able to leave the country if it is probable that he would try to escape the pre-trial investigation, the trial or the enforcement of punishment by leaving the country.

France

The seafarer required to be present for any investigation trial and other hearing may be permitted to leave the state. Its depends on the judge and on the criminal charges against him.

Germany

They usually are allowed to leave Germany depending on the risk of escape.

Greece

As long as serious indications of implication are envisaged, the judicial authorities can forbid the accused seafarer to abandon the country so as to make sure that he/she will be present during the inquiries or before of the Court procedure.

Hong Kong

With reference to the answer to Question 5 above, depending on seriousness of the offence(s), strength of evidence against the seafarer and/or bail terms/conditions ordered, a seafarer might be permitted to leave Hong Kong should the court satisfy that he will return to Hong Kong and surrender to custody as the court may appoint.

Italy

The general rule under the new Code of Criminal Procedure is that the persons against whom a criminal (as opposed to an administrative) investigation is carried out may leave the country. If the public prosecutor in charge of the proceedings considers that there is a danger of escape he may ask the Judge in charge of the Preliminary Enquiry to take action in order to prevent the person in question to leave the country (e.g. seizure of the passport or I.D.). These rules apply also to seafarers.

Japan

Unless being detained or arrested, the crew involved in an accident may leave our State. If the accused is out on bail, he may leave our State. But bail may not be granted in such cases where there is reasonable ground to suspect the accused may destroy evidence.

Korea

It is usual manner that the accused is not allowed to go out Korea before his trial if he is indicted in the criminal proceeding (When he is indicted without imprisonment he may leave Korea with the permission of the judge). However, in civil proceeding or administrative proceeding he can leave Korea and return to Korea in order to take part in the subsequent proceeding. In this case, a ship's agent submits to the appropriate office a kind of confirmation letter for the foreign seafarers to return to Korea.

Nigeria

In most cases the state will not permit Seafarers to leave until after the Preliminary Inquiry (PI) and the Marine Board of Investigation is concluded.

Norway

Yes, normally.

Slovenia

If there're present the reasons for the protective custody, the seafarers can not leave the state.

South Africa

No legislation specifically governs this issue. In the normal course however, foreign accused persons would not be entitled to leave South African pending a trial. Procuring their attendance at the trial after they have left the country would be impossible in many circumstances and impractical in most of the other circumstances. Where a seafarer is not an accused person, they are permitted to leave South Africa. In practise, SAMSA's preliminary investigations take place immediately and often before the salvage operation itself is concluded (where applicable).

Where a casualty has taken place, P&I Clubs' local representatives are generally cooperative with SAMSA and the Clubs' persuade the shipowners to allow their employees to remain pending the preliminary investigation.

In the absence of cooperation by the owners and their P&I Club, SAMSA are only entitled to detain a person by way of an arrest where a charge is brought against them.

Sweden

A decision in this respect will have to be made on a case by case basis. Important considerations may include the likelihood of a crew member returning, or, for example, the gravity of the case.

UK

Seafarers will be permitted to leave the UK unless they are refused bail or are granted bail subject to conditions which restrict them to staying within the UK.

Under the Bail Act 1976 ("BA 76"), there is a rebuttable presumption in favour of granting bail.[52] This applies only before a person has been convicted of an offence; thereafter there is no *right* to bail.

The court will consider various factors in deciding whether or not to grant bail. These depend on whether the alleged offence, if proved, will be punishable by imprisonment. For imprisonable offences grounds for refusing bail include the existence of substantial grounds to believe that a defendant would (if released) fail to surrender to custody. In such cases bail may be granted subject to conditions to ensure that the defendant surrenders to custody and makes himself available for enquiries to be made. These conditions may involve provision of one or more sureties; security; reporting, curfew or residence restrictions.

These grounds for refusing bail, or for granting bail only on conditions, do not apply to offences not punishable by imprisonment. In relation to such offences bail can be refused only on very limited grounds, e.g. that custody is considered necessary for the defendant's own protection, or that there has been a previous failure to comply with bail conditions.

If a defendant charged with an imprisonable offence is a foreign national, and the question arises whether bail should be granted only on condition that he remains in the UK, it will be relevant whether he is a national of another EU member state. EC law

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[52] Bail Act 1976 s. 4(1).

provides for a European Arrest Warrant, recognised throughout the Community as binding on member states, to facilitate the surrender of defendants from one EU state to another. The availability of this process is a factor which in some cases may persuade the court to permit the defendant to return to his home country pending trial.

Uruguay

Only Criminal Courts can, after an indictment has been filed against such a person, request bail in order to insure that a person is going to be present to give evidence.

USA

The general answer to this question would be "No" when applicable to non-U.S. seamen. By the nature of their nationality and occupation government authorities consider them to be "flight risks . There have been occasions where the prosecutors have allowed vessel personnel to be repatriated against a promise by the owners to return them at the necessary time. This is usually accompanied by a demand for a substantial cash deposit or bond guaranteeing the return of the subpoenaed crew members. In this regard, there is a procedure available for the release of crew that crew members that have been the designated as "material witnesses" to return to their vessels and/or country of origin which involves either the crew member or his employer, or both, posting material witness bonds (secured or unsecured, as may be ordered by the court) in amounts determined by the court. Generally, as one of the conditions of the bond, the crewmen and his employer promised that the crewmen that crew member will be returned to the jurisdiction if his or her appearances required by either the authorities or the court.

Question 7:

Does your State require a financial surety to ensure that seafarers return for any subsequent hearing and, if so, how is the amount of such a surety determined and what form is required?

Argentina

Yes, it is possible.

Australia

See Question 5.

Bulgaria

According to art. 146, p. 1 of PPC one of bails is a safe pledge. The safe pledge is stipulated with the other three bails – common bail, house arrest and detention. The safe pledge could be pecuniary or in government securities (art. 150, p. 1). When the safe pledge is determined, the authorities have also to consider the property status of the accused. The safe pledge could be done by the accused but also by another person. The term to present this bail or to change it with another one (from common bail to safe pledge), is from 3 days to 15 days. The safe pledge has to be released when the accused is discharged, or the punishment is not to put in prison or the detention is made in the aim to execute the punishment (penalty of crime).

Brazil

Usually, a Term of Commitment has to be sign. Besides this, according to the case, there is a fee (not refundable) to be paid.

Canada

For a seafarer charged with an offence, the availability and amount of bail to be posted to obtain a seafarer's release and compel his or her return for trial would be determined by the Court.

Chile

No.

China

China hasn't made specific regulations on this point.

Croatia

Financial surety is not required. In criminal procedures. However, there is a possibility of detention, retention of personal identification documents, or temporary arrest.

Denmark

Under Danish law, no authority exists to request financial surety in order to ensure that seafarers return for any subsequent hearing.

Dominican Republic

Yes, but only for those who are considered as participants in or liable for the incident/pollution.

Finland

Seafarers may be subject to a conditional imposition of a fine in order to ensure that the seafarer returns for a subsequent hearing. This procedure is however not used often.

France

Usually financial security is asked to authorize the ship to leave the port but not to ensure that seafarers return for any subsequent hearing ; however this is possible according to French law.

Germany

They usually are allowed to leave Germany depending on the risk of escape.

Greece

Yes; the Public Prosecutor is entitled to ask from the defendant a specific sum of money as a means to ensure the return of the accused seafarer for any forthcoming process. We say that "the defendant provides a guarantee". The amount of the guarantee is determined according to the seriousness of the deed of which is accused the defendant and o f his overall financial and personal state.

Hong Kong

Should the court find it proper to grant bail (whether or not with permission to leave Hong Kong), one or more than one financial sureties might be required to secure the surrender to custody of the seafarer admitted to bail (section 9D(3)(b)(viii) of Cap.221 refers). As for the number of sureties and/or amount of surety involved, it all depends on seriousness of the case, strength of the evidence against the seafarer and/or existence of factors which support the seafarer's claim that he will report to court on the appointed day.

Italy

Under Italian law if the conditions for an order of detention materialize, detention cannot be avoided by providing surety. This would appear to be strange, because it would favour a wealthy person as opposed to a poor.

Japan

Bail money must be paid in the amount determined by the court in accordance with the Code of Criminal Procedure.

On ratification of the UNCLOS, the Government of Japan has introduced a bail bond system which is able to release offenders earlier to ensure smoother criminal procedures through provision of bail bonds, etc.

The amount of the bail bond is determined by the personnel in charge of enforcement, based on the standard determined by the Minister in charge.

The standard is based on consideration of the type of offense, potential punishment (i.e. fine), extent of offense, frequency of offenses, etc.

In addition, a bond or other appropriate financial security in writing is required.

Korea

No such system exists in Korea.

Nigeria

The stage is very reluctant to accept a financial surety and will keep the Seafarer within its territory.

Norway

No surety is required.

Slovenia

This is also a possibility on the base of the provisions of the Slovenian criminal process act. The amount depends on the circumstances.

South Africa

A provision for financial security does not exist in the legislation. In practice, to date, despite several severe casualties the P&I Clubs' local representatives have advised that SAMSA have never requested security or any guarantees to secure the return of foreign nationals

Sweden

No.

UK

A financial surety, or the provision of security by the defendant, is envisaged by the BA 76 as a possible condition of bail.

7.1. Surety

A custody officer, as well as a court, may require a surety. A surety's only obligation is to ensure the accused's attendance at court; the surety is not expected to prevent further offences or interference with witnesses. It is therefore logical that sureties should only be required when there is a risk of absconding. In considering whether a proposed surety is suitable, the BA 76 provides that regard may be had, *inter alia* to:

– the 'financial resources' of the proposed surety

– the 'character' of the proposed surety and whether he has any previous convictions

– the 'proximity' of the proposed surety to the person for whom he is to be surety. This is considered the most important factor since it is regarded as reflecting the extent of the surety's ability to control whether the accused will attend at court.[53]

In setting the amount of the surety, the court considers the seriousness of the offence and the degree of risk that the accused will abscond. If the surety cannot meet the required sum then (as is quite common) one or more additional sureties must be found. Usually, if the accused fails to answer to his bail, the entire sum in which he stood surety must be forfeited by the surety.

7.2 Security

Although a person cannot stand surety for himself he may be required to deposit with the court money or another item of value which will be forfeited if he fails to answer to bail.[54] This security may be given by either the accused or by somebody else on his behalf.

Uruguay

The amount and form of the bail will depend on the financial status of the indicted person, and the importance of the incident.

USA

See the answer to question 6. The amount of the security is discretionary and can be based on the number of potential criminal offenses as well as the maximum fine for each offence. There is a wide diversion between the various Coast Guard districts and the Department of Justice on the amount of security requested. Sometimes the security amount can be negotiated.

Question 8:

Is your State's maritime administration or other authority given legal responsibility for the protection, rights and welfare of all seafarers and, if so, how is this responsibility administered?

Argentina

The Coast Guard and other authorities are in charge of subjects of environment.

Australia

In terms of living and working conditions on board a vessel, if there are matters that are clearly hazardous to safety or health, detention powers are available under the Navigation Act 1912 and some issues may be managed under port State control if they are matters that should be covered under a ship's ISM safety management system. There are further requirements for Australian ships concerning the supply of adequate provisions, and the obligation of owner to provide medical attendance in case of injury.

Other serious welfare issues such as physical abuse and non-payment of wages may be addressed under criminal and civil legislation.

In terms of prosecutions of seafarers, generally speaking the criminal legal system in Australia affords certain safeguards.

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[53] *Ibid.*, s.8.

[54] *Ibid.*, s.3(2).

Bulgaria

The Executive Agency "Marine administration" at the Minister of transport and communications is not authorized to give a legal defence to the seafarers (the crew members) in the cases of detention because of marine accident occurred. The Executive Agency "Marine administration" is a state control authority on the shipping safety. The seafarers defence has to be realized according to the procedure rules of PPC by legal defenders/advocates or other persons, stipulated in PPC. When the actions are not considered as a crime, the defence has to be done according to administrative legislation.

Brazil

Yes. According to the place there will be alongside Brazilian coast an authority who represents the Director of Ports and Coasts (Diretor de Portos e Costas), who will administrate the incidents. However, Federal Police can also be involved and take the responsibility for the protection, rights and welfare of seafarers.

Canada

The Canadian Department of Transport has some measure of legal responsibility with respect to seafarers under the *Canada Shipping Act*. This Department also has responsibility for port state control inspection pursuant to the Paris and Tokyo Memoranda of Understanding, which powers are in part exercised to protect the safety of seafarers. Human Resources Canada also deals with aspects of seafarer rights and protection through its jurisdiction over labour matters, although this is principally handled through the Department of Transport under a Memorandum of Understanding between the Departments.

Chile

No.

China

The maritime administrative organizations have legal obligations for the protection of rights and welfare of all seafarers, while these obligations are often embodied after the maritime accidents. There is a certain regulation called Regulations on Reporting and Handling Fatal Accidents of Workers and Employees in Enterprises (RRHFAWEE), which stipulates the obligations of the administrative organizations on protecting workers' and employees' rights when fatal accidents happen. Since the regulation is applicable to all the enterprises in china, it can be concluded that the maritime administrative organizations will bear such obligations if the accidents happen:

(1) According to the provisions of article 5, article 6 and article 7 of the above regulations, the maritime administrative organizations should accept the report concerning seafarers' fatal accidents from the person in charge of the enterprise. The organizations should immediately report the accidents to the higher authority step by step. Death accidents need to be reported to the maritime administrative organizations of Provinces, Autonomous Regions or Municipality directly under the central government. Heavy death accidents need to be reported to Ministry of Communications under the State Council.

(2) The maritime administrative organizations should set up the investigation team to investigate the death accidents and the heavy death accidents. The team has to identify the reason, process, casualties and economic loss of the accidents. It has to give some advice on how to deal with the accidents and some suggestions on precaution measures. It also has the obligation to write the accident investigation report. The maritime administrative organizations have the obligation to handle the advice and suggestions forwarded by the accident investigation team.

Croatia

Clarification needed in order to reply.

Denmark

Neither the Maritime Authority nor any other Danish authority has been given specific responsibility for the protection, rights and welfare of all seafarers.

However, it should be mentioned that the Danish Ombudsman is under a general obligation to ensure that Danish authorities comply with the law and do not exceed their authority towards individuals, including seafarers, and that the Maritime Authority is generally responsible for ensuring that SSA is complied with, including rules on a self and healthy work environment for seafarers.

Dominican Republic

The Dominican Republic is signatory to SOLAS, and primarily the DR Navy, but also any other local authority (I.E. District Attorney, Police Department, Dominican Port Authority) is responsible to comply with the same. Incidentally, a new penal code has been recently placed in force and the same provides all detained persons (whether or not seafarers) with a lot of rights (in respect to the previous old Napoleon Penal Code).

France

There is no particular protection for the seafarers. As every citizen in France, the seafarer has the right to be assisted by a lawyer and if he cannot afford the fees, a lawyer will be appointed by the President of local Bar.

No maritime Administration or other authority has legal responsibility for the protection, rights and welfare of seafarers.

Germany

Yes the German maritime administration is responsible for the protection, right and welfare of all seafarers due to ILO regulations.

Greece

There is the "Administration of Maritime Labour" which assists Greek seafarers in a variety of matters and protect their rights and welfare at an administrative level. "The Administration of Maritime Labour" is appointed and administered by the Ministry of Merchandile Marine.

Hong Kong

MD is responsible for administering and enforcing the Merchant Shipping (Seafarers) Ordinance, Cap.478 in Hong Kong and on Hong Kong ships. Under section 96 of Cap.478 the protection is restricted to the normal daily welfare of the seafarers and does not apply to seafarers under detention condition. This section applies to:

a. Hong Kong seafarers and non-Hong Kong seafarers working on Hong Kong registered ships;

b. Hong Kong seafarers working on non-Hong Kong registered ships; and

c. non-Hong Kong seafarers working on non-Hong Kong registered ships while these ships are within Hong Kong waters.

Italy

A distinction must be made between the right of seafarers to payment of wages and other remuneration and their welfare. As regards the former right, besides the protection of the Unions, article 4 of law 4 April 1977, No. 135 on Maritime Agents provides that the agent who hires seafarers for embarkation on vessels of a nationality different from

the nationality of the seafarers shall provide to the local Port Authority evidence that the ship owner has supplied an appropriate bank or insurance guarantee for the payment of the wages during the period of employment on board. As regards the sea farers welfare, social security is compulsory in respect of all seamen embarked on Italian flag ships, irrespective of nationality. In addition, Article 4 of Law 135/1977 provides that the agent who hires seafarers for embarkation on vessels of a different nationality shall ascertain and attest to the local Port Authority of the port of embarkation that such seafarers have been insured against accidents and illness with the Italian or other social insurance institution for the whole period of employment on board.

Japan

The Ministry of Land, Infrastructure and Transport has the responsibility for the protection of seafarers' labor rights, while other Ministries have responsibility for other relevant rights.

Korea

Ministry of Maritime Affaires and Fisheries and Ministry of Labour.

Nigeria

The Maritime Safety Administration-NMA and the Joint Maritime Labour Industrial Council (JOMALIC) both have the legal responsibility for the protection, rights and welfare of all seafarers.

(i) The NMA is empowered under Chapters 9Ssections 45-51,Chapter 10 Sections 52-61, Chapter 11 Sections 62-67, Chapter 12 Sections 68-77, Chapters 15 Sections 83-92, Chapter 16 Sections 93-104, Chapter 18 Sections 106 110, Chapter 21 Sections 123-126 the Merchant Shipping Act, cap224 Laws of the Federation of Nigeria 1990

(ii) The JOMALIC he is empowered under the Nigerian Maritime Labour Act 2003 in the following sections:

a. Part V – Registration of Seafarers and Seafarers employers
b. Part IX – Establish of a pall of Dock workers and Seafarers
c. Part X – Establishment of a Maritime Labour welfare disengagement Fund
d. PartVII – Conditions of Service of dock workers and Seafarers
e. Part VIII Section 26 – Wages and remuneration.

Norway

Human rights are part of our Constitutional Law. Norway has also a specific Human Rights Act from 21. May 1999. The aim is to strengthening human rights in Norwegian law. We are also bound by e.g.EU Convention on Human right, and UN Conventions on human rights and of course the Regulations in the Law of the Sea.

Slovenia

In Slovenia doesn't exist any particular authority that is responsible for the protection, rights and welfare of all seafarers.

South Africa

SAMSA is not given general legal responsibility for the protection of the rights and welfare of all seafarers. Miscellaneous acts provide for inspection of ships by SAMSA, Department of Immigration, Health Authorities and the South African Police Services. These generally relate to safety and health issues and not specifically to the welfare of the seafarer.

Sweden

In case of a crew member being imprisoned, the prison authorities are responsible for the protection, rights and welfare of the crew member.

UK

The UK has ratified 86 ILO conventions, a number of which deal specifically with seafarers' rights. Of particular relevance are the following, which oblige contracting states to introduce implementing national legislation:

- Seamen's Articles of Agreement Convention, 1926
- Repatriation of Seamen Convention, 1926
- Social Security (Seafarers) Convention, 1946
- Accommodation of Crews Convention, 1949
- Seafarers' Identity Documents Convention, 1958
- Accommodation of Crews (Supplementary Provisions) Convention, 1970
- Merchant Shipping (Minimum Standards) Convention, 1976
- Labour Inspection (Seafarers) Convention, 1996
- Seafarers' Hours of Work and the Manning of Ships Convention, 1996
- Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976

8.2 Domestic Legislation

Domestic legislation largely takes the form of secondary legislation, created pursuant to the Merchant Shipping Act 1995. Please see the attached Appendix for examples of domestic legislation in this area (much of which implements conventions such as those mentioned above).[55]

Uruguay

No, there is no State Maritime administration or authority with legal responsibility for the protection, rights and welfare of all seafarers in general.

Seafarers rights are protected in the same way, and under the same rules, as the rights of any other person, citizen or foreigner.

Labor Administrative Authorities have to protect workers' rights because Uruguay has ratified most of the O.I.T/ I.L.O. Conventions.

USA

The Coast Guard has the responsibility for the safety, health and security of seafarers. It must be noted, however, that the Coast Guard while being charged with the protection of seamen's rights has a seemingly conflicting duty to investigate, enforce and assist in the prosecution of civil and criminal violations of environmental law. This dual mission has left the Coast Guard in an unenviable position of being protector and enforcer at the same time. The Department of Justice, the crewmen's lawyers and Courts are also charged with responsibility of protecting the rights of seafarers.

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[55] See further the ILO website: http://www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=en

Question 9:

If a maritime accident resulting in serious pollution occurs in waters under the jurisdiction of your State that involves a foreign-flag vessel with a crew of different nationalities, what is the expected role of vessel crew members held responsible in the subsequent investigative process?

Argentina

They may be summoned as witnesses or imputed during the administrative or judicial proceedings.

Australia

If the investigative process involves a violation of MARPOL 73/78, as noted in respect of Question 3 above, Federal MARPOL legislation provides for criminal sanctions against any crew-member responsible for a pollution incident.

Bulgaria

Firstly, here we need to specify the applicable law. According to Section II of CSC dedicated on the applicable law, the reason and the limits of ship-owner responsibility are stipulated by the law of vessel's flag country ("lex banderae" – lat.). According to art. 9 of CSC "ship-owner" is the person who use the ship although he is the real owner or he uses the ship on another legal reason. Bulgarian law is applicable to specify the tort damages caused by vessel in internal sea waters, in territorial sea or in internal water ways of Bulgaria (art. 9, p. 2 of CSC). The compensations of damages caused by vessel's clash in internal sea waters, in territorial sea or in internal water ways are stipulated according to national legislation (art. 14 of CSC).

The analysis of provisions above mentioned leads to conclude that the different nationality of crew members is not important to determinate the applicable law. When Bulgarian law is applicable and namely, the cases related to the compensations of tort damages caused, the provisions of Obligations and Contracts Act (OCA) are available. According to art. 45 of OCA everybody is obliged to cover the tort damages caused guilty to another person. The guilt is always presumptive until the contrary is proved. We could indicate more provisions of Bulgarian civil law related to this question, namely: the person imposing a work is responsible for the damages caused during the work or in occasion to (art. 49 of OCA). The objects owner and the objects supervisor are jointly and severally liable for the damages caused by them (art. 50, p. 1 of OCA). In the cases of proximate damages a compensation is always needed. This compensation could be paid in a single or periodic payment. The compensation could be reduced in the case of contributory negligence. According to art. 52 of OCA the compensation for non-material damages have to be determined by the court "ex equo et bono'. If the damage is caused by a member of persons, they are jointly and severally liable. The person responsible instead of another one has the right of regress.

When the action of seafarers (crew members) is considered as a crime, the P Code is applicable and the procedure is according to PPC provisions. When the action is not considered as a crime the administrative penal provisions of CSC are applicable (see the answer of question 3). The CSC consnists a special regulation on the oil-tanker owner responsibility in the case of oil and oil products pollution caused by the oil-tanker. There is a special administrative penal provisions included in a new chapter 15 of CSC, admitted in 2004. According to art.346 a the oil-tanker owner is responsible for the damages caused in case of oil-tanker accident (see more detailed analysis of this responsibility in the answer of question 10).

Brazil

First, it must be noted that, as a matter of Brazilian law, the circumstance of the crew being of different nationalities is irrelevant.

Second, as pointed out in our reply to question no. 6 above, seafarers are required to provide the Brazilian authorities with the information/evidence in respect of the ship and their conduct. The time during which they may be prevented from leaving the country while collection of information/evidence is in course is set out in the response to question no. 6 as well.

Canada

The TSB would typically interview the crew members with a view to reaching conclusions as to causes and contributing factors. The crew members are obliged to participate in such interviews. Other regulatory authorities, such as the Department of Transport, Department of Fisheries and Oceans and Department of the Environment, may also expect to interview crew members either as witnesses or accuseds. There have been disagreements, between regulatory authorities and their counsel on the one hand and the defence bar on the other hand, concerning the extent of crew members' obligations to participate in interviews in the context of such investigations.

Chile

There is no different status depending on the nationalities. Any crew member held responsible may be fined by the Maritime Authority irrespective of his nationality.

China

Firstly, the obligations of the crew members won't vary just because the accident involves a foreign-flag vessel with a crew of different nationalities. According to the provisions of law on investigation procedure, the application won't be changeable with the nationality of the vessel and its crew. These regulations can be listed as follows: the provisions of article 2 of MEPL, the provisions of article 2 of MTSL and the provisions of article 3 of RIHMTA.

Secondly, the responsibilities of the crew members can be listed as follows:

(1) They must subject themselves to the investigation, honestly state the relevant circumstances of the accident and provide authentic papers and materials. We can find these responsibilities from such legislation: the provisions of article 19, section 2 of MEPL, the provisions of article 42 of MTSL and the provisions of article 12, section1 of RIHMTA.

(2) They should sail the vessel to the spot for investigation or stay at the said spot without the permission of the organizations. The obligation comes from the provisions of article 13 of RIHMTA.

Croatia

Vessel crew members held responsible shall participate in the offence and criminal procedure.

Denmark

As long as it is not in contravention of Denmark's scat International obligations, crew members on foreign flag vessels are expected and legally required to assist the Division of Investigation of Maritime Accidents and the Admiralty in their investigations to the same extent as Danish seafarers.

Dominican Republic

To fully cooperate with the investigation, as per the general provisions of

International Maritime law, in case of penal/criminal violations, the law of the coastal country applies to the same, irrespective of the vessels flag and/or the nationalities of her crew members.

Finland

As a suspect or witness in an ordinary pre-trial investigation according to the Criminal Investigations Act (L 449/1987).

France

If a foreign flag vessel with a crew of different nationalities is involved in a maritime accident resulting in serious pollution, the expected role of the vessel crew members is to be at the disposal of the authorities.

Germany

If a maritime accident resulting in serious pollution occurs in waters under the jurisdiction of your State that involves a foreign-flag vessel with a crew of different nationalities, what is the expected role of vessel crew members held responsible in the subsequent investigative process?

Greece

One of the main rules which is adopted by the Greek criminal legislation is that criminal punishment is imposed to all crimes committed within the Greek territory, even if they are committed by foreigners. Taking this remark into account, we conclude that the criminal procedure is not going to differ from what has been presented above. As long as foreign seafarers are charged with personal liability for the marine pollution accident (that is either willful misconduct or negligence), they will be subject to the same criminal treatment, as if they were Greek citizens.

Hong Kong

Under Section 46 of Cap.313, the owner and the master of the vessel will be responsible for the discharge of oil or mixture containing oil into the waters of Hong Kong. Normally, MD would seek indemnity from the vessel's P&I club.

Italy

The crew of a foreign-flag vessel is bound, when the vessel is in Italian territorial waters, to comply with applicable Italian laws. In case of an accident resulting in pollution, the members of the crew of a foreign flag vessel may be required to give evidence on the accident, both in the administrative enquiry conducted by the Port Authority and in the possible subsequent criminal proceedings. This, as previously stated, does not entail their obligation not to leave the country, but may be requested to return in order to give evidence. If certain seafarers are held personally responsible for the pollution they may be condemned to pay fines or even to prison (albeit this has never happened, to our knowledge).

Japan

All co-operation possible with the investigational authority, including submission of all evidence, statements and documents to determine the causes of the accident.

Korea

He will be officially accused of the accident.

Nigeria

The role of the vessel crew members held

(i)The crew members held responsible will give evidence during the Preliminary Inquiry which is carried out by the administration.

(ii)They are also enquired to give evidence as key witnesses before the Marine Board of Inquiry

Norway

According to MC § 477 anyone has a duty to give the investigation authority information and to present documents of importance for the investigation process to the investigation authority. Persons do have the right to be represented by a lawyer. Both the master and the shipping company should present the ships books. However, information can not be used as evidence in a later criminal case against the person.

South Africa

The foreign crew of a foreign flagged vessel involved in a serious pollution incident within South African waters will be dealt with in accordance with the responses to the questions set out above. If there is evidence to show that they are guilty of an offence they may be charged and can be arrested. Otherwise SAMSA are not in a position to detain them.

Sweden

As regards responsibility see 5. above. Otherwise, crew members may appear as witnesses in the investigation process

UK

Criminal liability for oil pollution from ships in UK waters depends on whether the incident occurred in internal or territorial waters, and on whether the pollution resulted from damage to the ship or its equipment. Further, under regulations which came into force in September 1996[56], the UK's powers to prosecute for pollution offences was extended by the creation of a `pollution zone' which extends 200 nautical miles from the UK coast. The Secretary of State's Representative (SOSREP) has various intervention powers within this zone and such powers are discussed at 12.2 below.

9.1 UK Territorial Waters

In UK territorial waters the position is governed by regulations which give effect to MARPOL Annex I.[57] This provides that discharges of oil from a ship shall be unlawful unless they comply with the controls and restrictions set out in Annex I,[58] but that there is no liability for pollution resulting from damage to the ship or its equipment, provided the damage is not attributable to personal act or omission of the owner or master committed with intent to cause damage, or recklessly and with knowledge that such damage would probably result.[59]

In the absence of such conduct seafarers are exempt from criminal liability for pollution resulting from damage to a ship or its equipment in a maritime casualty. However this defence will not avail them in the case of spills which are not attributable

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[56] The Merchant Shipping Regulations, 1996 (Prevention of Pollution, Limits), SI 1996/2128 (as amended)

[57] The Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (as amended).

[58] MARPOL Annex I Reg. 9.

[59] *Ibid.*, Reg. 11.

to such damage, notably escapes of oil resulting from mishandling of equipment during oil transfer operations, or leakages resulting from wear and tear or other defects in the ship's equipment. In such cases prosecutions could be brought on a strict liability basis, but in practice proceedings have not normally been brought if it has been clear that no negligence was involved on the part of the owner or master.

9.2 UK Internal Waters

In the internal waters of the UK the legal framework is different. Here the position is governed by the MSA 95.[60] These provisions owe their origin to legislation which pre-dated MARPOL and originally applied in territorial as well as internal waters, prior to being superseded in territorial waters by the regulations based on MARPOL. There are technical differences between the two regimes but in substance they are similar.

9.3 Other grounds for prosecution

A maritime accident resulting in pollution may give rise to other charges which do not depend on the pollution itself but are founded on conduct endangering the ship or other persons. Such an offence may be established by proof of acts or omissions involving neglect or breach of duty which would not necessarily be sufficient for the purposes of a prosecution under legislation referred to in paras 9.1 and 9.2 above.[61]

9.4 EU Draft Directive on Criminal Sanctions for Ship-source Pollution

There are proposals to change the position outlined in 9.1 and 9.2 above by the EU Draft Directive on Criminal Sanctions for Ship-source Pollution. In its current form the Draft does not distinguish between operational and accidental discharges of oil, and any discharge would be "illegal" if it results from "serious negligence" on the part of the defendant. This test is different from that prescribed by MARPOL in respect of spills resulting from damage to the ship or its equipment. The Draft Directive provides that MARPOL prevails in waters beyond the territorial sea,[62] but otherwise it asserts precedence over MARPOL, notably in territorial waters. The Draft Directive has provoked considerable protest from a coalition of shipping industry and seafaring bodies. The main objections are firstly that "serious negligence" is a subjective and unsuitable test of liability for oil spills, and secondly that this test is inconsistent with MARPOL.

Uruguay

There is no expected role of vessel crew members. They may be requested to give evidence in the administrative proceedings, as witnesses and the Captain, or Officers can be requested to show the ship's log or books. Seafarers nationality is always irrelevant.

USA

The expected role of vessel crew members is full cooperation with authorities in their investigation. U.S. constitutional rights include the riot against Self-crimination (Fifth Amendment), the right to counsel, the right to have a Court proceeding in their native language and the right to confer with officials from the flag state or their own nation on their legal situation

With respect to the Fifth Amendment right against self-incrimination, no see fairer can be forced by the authorities to speak to them or make any statement on the matter

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[60] Merchant Shipping Act 1995 ss.131–133.

[61] See the discussion at para 5.1 above of the offence under the Merchant Shipping Act 1995 s.58.

[62] I.e in Exclusive Economic Zones of EU member states and on the High Seas.

where doing so may expose that seafarer to criminal liability. However, if a seafarer chooses to speak to the authorities, anything that he or she may say can and will be used against them. Moreover, if the seafarer lies or makes any other type of false or misleading statement to the authorities or presents a vessel record with false statements or induces others to make false statements, such seafarer can be separately charged with a number of independent criminal charges such as False Statment, Obstruction of Justice, Conspiracy, Interference with a Government Proceeding, etc. All of such charges are felonies and can subject the seafarer to jail time, if convicted.

Question 10:

If the accident, as outlined in Question 10, is due to negligence but not wilful misconduct by responsible crew members, will your State proceed only with pollution damage claims under the accepted international civil liability and compensation system?

Argentina

This misconduct would arise patrimonial liability, farther on in all cases were started the proceedings pointed out in Nº 2.

Australia

No.

Bulgaria

The answer of this question consists to a great extent in the answer of Question 9. If the accident mentioned above is considered as a tort, the guilt for the damages caused is presumptive until the contrary is provided. The regulation is according to OCA (see the answer of Question 9).

CSC consists a special regulation related to the oil-tanker owner's responsibility for damages caused and the oil and oil-products pollution occurred. According to art. 346b the compensation has to cover the proximate damages until the charges needed to restore the environment and also to cover the prevention measures reducing the damages and remoteness of damages. The oil-tanker owner has the right to reduce his responsibility in any case of accident and namely: until 3 million. Special drawing rights of International Monetary Found (IMF) in BG leva – for the oil-tankers with a tonnage until 5000 gross tones; the sum total of the amount in p. 1 and 420 Special drawing rights for every gross tone over 5000 gross tones, but not more than 59,7 million. Special drawing rights in BG leva – for the oil-tankers with over 5000 gross tones (art. 346 c). The oil-tanker owner has not the right to reduce his responsibility if the damages were guilty caused as a result of his own actions. The oil-tanker owner who is transporting a cargo more than 2000 tones broached oil must have an insurance, bank warranty or another financial equitable charge, covering the respective charge – until 3 million Special drawing rights of IMF in BG leva.

Each Bulgarian-flag oil-tanker transporting as a cargo more than 2000 tones of broached oil, must have on board certificate issued by the Executive Agency "Marine administration". The condnitions and procedure are stipulated in a special ordinance.

A foreign-flag oil-tanker shipping on the flag of State – member of International convention related to civil responsibility for oil-pollution (1992) and transporting a cargo more than 2000 tones broached oil, must have on board a certificate to prove an insurance, bank warranty or another financial equitable charge, covering the responsibility for oil-pollution damages, or a certificate to declare that the oil-tanker is a property of this State. The responsibility for oil-pollution damages according to art.

346 c is until the amount of 3 million Special drawing rights of IMF in BG leva. The certificate must be issued by State authorities of the oil-tanker flag. The Executive Agency "Marine administration" makes a register of certificates issued.

Brazil

No, in pollution cases, even in if the accident is due to negligence (and not to willful misconduct) proceedings in the three aforementioned spheres (civil, penal and administrative) will take place. Liability in civil and administrative spheres is a strict one, i.e., regardless of fault on the part of the wrongdoer, while penal liability in pollution cases is based on fault only.

In respect of pollution damage claims it must further be noted that only two international civil liability regimes (limitation conventions) in maritime area in force in Brazil. These are (i) the 1924 International Convention for the Unification of Certain Rules Relating to the Limitation of Liability of Owners of Sea-Going Vessels and (ii) the CLC/69. And, anyway, it is doubtful/controversial whether or not the limitation provisions of these two Conventions apply to environmental damage (i.e., damage to environment itself), as opposed to damage to third parties, such as fishermen, tourist activities, etc.

Canada

The fact that a pollution incident is attributable to negligence rather than wilful misconduct does not necessarily mean that the incident will be treated strictly as a civil matter without penal prosecution. For the most part, the offences to which a vessel and its crew are potentially subject are strict liability offences. While a defence of due diligence is available, such defence may not be applicable if negligence is involved.

The responsible regulatory authority, guided by the Canadian Department of Justice, would assess each incident on a case by case basis in deciding whether to lay charges.

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Chile

Yes.

China

No.

Croatia

Offence procedure is also underrun if there is a violation of maritime legislation.

Denmark

No.

Dominican Republic

No. If there is a pollution, there is an assumption of negligence and/or misconduct in the part of the vessel's master and/or other crew members. The burden of proof to

establish the contrary lies upon their shoulders. If the accidental nature of the events can be proven, (no negligence, no wilful misconduct) then it will pursue only pollution compensations.

Finland

No. The Penal Code 48:4 regarding environmental crimes (pollution damage due to ***negligence*)** might be applied. This means that the suspect has actively polluted the environment by discharging substances to the environment or passively polluted the environment by not taking appropriate measures to prevent pollution in some cases. Sanctions under rule 48:4 fine or imprisonment for a maximum of one year.

France

No.

Germany

Yes.

Greece

No; the crime of marine pollution is established whether it has been committed out of willful misconduct or negligence. So, in case of negligence the criminal liability will remain but the threatened sentence will be prominently reduced.

Hong Kong

No.

Italy

Article III.4(a) of the 1992 CLC, ratified by Italy, provides that no claim for compensation for pollution damage may be made against members of the crew unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. Since the Convention applies, pursuant to its Article II, to pollution damage caused in the territory, including the territorial sea, of a Contracting State, the above provision prevails over any provision of Italian domestic law.

Japan

No. Except for procedures related to pollution damage claims under international instruments (i.e. CLC, FC and LLMC Convention), please refer to Question 11.

For your information, where the pollution incidents are caused by tankers due to the negligence of the crew members involved, such members shall not be subject to pollution damage claims under the provisions of section 4, article 3 of the Law on Liability for Oil Pollution Damage, which implements the CLC and FC Convention. Where the incidents are caused by ships other than tankers due to the negligence of the crew members involved, such members may be subject to pollution damage claims, but their civil liability as well as that of the ship owners may be limited pursuant to paragraph1, Article 3 of the Law on Limitation of Liability for Maritime Claims, which implements the LLMC Convention.

Korea

In addition to the civil liability, the crew is subject to criminal charges even by his negligent action pursuant to Korean Marine Pollution Prevention Act.

Nigeria

The state will proceed only the pollution damage claims under the International Civil Liability and Compensation system.

Norway

According to our environmental law negligent pollution can be punished by criminal sanctions. The answer is therefore No.

South Africa

Yes.

Sweden

Negligence is sufficient to warrant sentencing for illegal oil pollution. See above 3. and 5.

UK

10.1. Criminal Liability

Criminal prosecution for an oil spill resulting from negligence without wilful misconduct will depend on whether the spill resulted from damage to the ship or its equipment. Major oil spills of this kind in the UK, such as the *Braer* and *Sea Empress,* did not result in any prosecution of seafarers. However there have been many prosecutions in magistrates' courts (and sometimes the Crown Court) resulting in fines being imposed for relatively small spills resulting from leakages, typically during pumping operations in port. A couple of recent examples are as follows:

10.1.1 Case Study: MSC Ariane

On 13 March 2003 the owners of the cargo vessel *MSC Ariane* were prosecuted at Southampton Magistrates Court after the vessel had been identified by reports and aerial photographs as the source of an oil slick. The incident took place in UK territorial waters and was therefore governed by regulations giving effect to MARPOL Annex I.[63] The magistrates convicted the owners of pollution, but the fine they imposed was reduced on appeal to the Crown Court.[64] Investigations indicated that the pollution probably was probably caused by a metal insert not being properly installed, as a result of which an inadvertent discharge of oily water occurred beneath the waterline and went unobserved by the bridge. The court stated that: "*sloppy, inadequate working practices on Ariane and from engineers onboard led to a lengthy slick*". Mitigating factors that were taken into consideration included:

– changes to the faulty pipeline since the accident (although not carried out immediately)

– the discharge being light oil not heavy crude

– no risk to health and safety (although the court noted that this "*seemed to be a matter of good fortune rather than action taken by crewmen on Ariane*"

It was also clear that the incident resulted from an act of negligence rather than a deliberate failure to comply with operational discharge controls.

10.1.2 Case Study: Averity

On 26 September 2001 the coastal tanker *Averity* was involved in an incident at Stanlow Oil Refinery which resulted in her owners being prosecuted for an offence of

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[63] See para 9.1 above.

[64] From £100,000 (plus £4,968 costs) to £30,000 fine. No costs were awarded to Owners, however, for the appeal.

pollution contrary to the MSA 95.[65] Whilst loading a cargo of Ultra Low Sulphur Diesel (ULSD) a discoloration in the water had been noticed and it transpired that both of the sea valves were open. Although the valves were closed loading was not stopped and, soon after, loading of kerosene commenced. It was later discovered that there was a discrepancy in the figures and that ULSD had entered the enclosed dock. It had, however been prevented from entering the Manchester Ship Canal by a "bubble barrier" across the entrance. The magistrates fined the Owners £10,000 plus £7,173 costs but noted, in mitigation, that Owners had entered an early guilty plea, had no previous convictions, had paid the full clean up costs and had taken measures to avoid a recurrence. The magistrates did, however, state that this was a serious offence that had resulted in a large spillage and had borne in mind the delay in raising the alarm and a breakdown in communication between the crew.

10.2. Civil Liability

Civil liability for pollution by persistent oil from tankers is governed in the UK by the Civil Liability Convention 1992. In accordance with the Convention, strict liability for such pollution is imposed on the registered owner of the ship,[66] and the servants or agents of the owner are exempt from liability in the absence of wilful or reckless conduct.[67]

Civil liability for pollution by oil from other ships – notably by pollution from ships' bunkers – will be governed in due course by the Bunker Pollution Convention 2001, if and when this enters into force and is implemented by the UK. In the meantime liability of this kind is governed by provisions in the MSA 95 which are similar to those applying to spills from tankers, and the servants or agents of the owner are exempt from liability to the same extent.[68] Liability for spills from ships other than tankers may currently be limited under the Convention on Limitation of Liability for Maritime Claims, London, 1976 ("the London Convention").[69]

It is also worth mentioning that a new instrument[70] dealing with compensation for accidents involving hazardous and noxious substances (HNS) has been drafted. This Convention will make it possible for up to 250 million SDR to be paid out to victims of disasters involving HNS (such as chemicals) but has not, as yet, entered into force.

Uruguay

Yes.

USA

Assuming that there is a typographical error in the question and that it refers to question 9, the U.S. is not a signatory to most international civil liability and compensation schemes choosing rather to rely on their own laws such as the Clean Water Act and the Oil Pollution Act of 1990 ("OPA 90"). The Clean Water Act and the OPA, by reference, contain criminal law provisions for any negligent act by the seafarer resulting in pollution. Other U.S.laws (i.e. Refuse Act and Migratory Bird Act) are

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[65] This was a spill in internal waters, governed by the Merchant Shipping Act 1995 s.131, as set out in para. 9.2 above.

[66] CLC 92 Art. III.1; Merchant Shipping Act 1995 s.153.

[67] CLC 92 Art. III.4; Merchant Shipping Act 1995 s.156.

[68] Merchant Shipping Act 1995 ss.154 and 156.

[69] The London Convention was implemented in the UK by Merchant Shipping Act 1995 s.185.

[70] The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996.

unilateral, no-fault criminal statutes (not requiring negligence or criminal in intent as a pre-requisite for their use) which can result in the Department of Justice bringing charges against seafarers and their employers.

In addition, a seafarer who has been deemed to have committed a negligent act resulting in the death of another can be charged under a federal statute commonly known as the "Ships Act", 33 U.S.C. sec. 1115, which is a felony, punishable with imprisonment up to 10 years and a fine of $250,000. In the event of a pollution incident, the local authorities have a right separate from the federal government to pursue or applicable state criminal statutes relating to pollution resulting from a seafarers negligence, recklessness and/or intentional act.

Question 11:

If the answer to Question 10 is 'No', what other processes or procedures will be undertaken by your State?

Argentina

Australia

Prosecution as for wilful misconduct.

Bulgaria

The answer to this question consists in the answers to questions 9 and 10.

Brazil

See answer to question 10

Canada

See the answer to question 10.

Chile

Not applicable.

China

(1) Criminal procedure

The legal basis for starting a criminal procedure can be listed as follows: the provisions of article 15, article 133 and article 136 of criminal law of the People's Republic of China.

(2) Administrative punishment procedure

While the seafarers' acts have not constituted a crime and should be punished by administrative organizations, the administrative punishment procedure will be started. The legal foundations are as follows: the provisions of article 44 of MTSL and the provisions of article 17 of RIHMTA.

When giving administrative punishment to seafarers, the maritime administrative organizations should abide by the provisions of Law of the People's Republic of China on Administrative Penalty (LAP) and provisions of the People's Republic of China on Marine and Maritime Administrative Punishment (MMAP).

(3) Administrative sanction procedure

The administrative sanction procedure will be started if the organizations need to establish sanctions against seafarers. The legal basis is the provisions of article 18 of RIHMTA.

Croatia

As above.

Denmark

Negligent of violation of SSA and MEA may also lead to criminal charges against seafarers.

Dominican Republic

Criminal charges/imprisonment against the liable parties (Master and all pertinent crew members) and fines.

Finland

As stated above.

France

Criminal proceedings may be undertaken even without wilfull misconduct by responsible crew members.

Germany

Greece

The already outlined criminal and administrative process are not influenced because of the negligent cause of the damage

Hong Kong

Regulations 35 and 36 of the Merchant Shipping (Prevention of Oil Pollution) Regulation, Cap.413A, give power to the Director of Marine to inspect, deny entry and detain the ship in question. If any ship fails to comply with any requirement of Cap.413A, the owner and the master of the ship in question are liable to a fine under regulation 37 of Cap.413A.

Italy

Not applicable

Japan

Following such an accident as described in question 10, if all possible measures to prevent the continuing discharge of oil were not taken, the crew may be punished by the Law Relating to the Prevention of Marine Pollution and Maritime Disaster.

No criminal procedure under the Penal Code has been undertaken in the case of accidents which cause marine pollution only. However if due to negligence, the accident harms human lives or safety, it may be subject to criminal punishment.

Korea

N/A

Nigeria

Not applicable

Norway

N/A

South Africa

Not applicable.

Sweden

See above 3. and 5.

UK

In the event of serious pollution there will be a full inquiry by the MAIB. As mentioned earlier, the investigation is not primarily concerned with apportioning fault but with identifying causes with a view to avoiding a recurrence. Nonetheless the conclusions and recommendations of an MAIB report may lead to a decision by prosecuting authorities to institute proceedings.

In the *Sea Empress* incident the MAIB report identified pilot error as the primary cause of the casualty and identified deficiencies in the systems operated by the Milford Haven Port Authority for training pilots and ensuring that pilots of appropriate experience were assigned to large tankers. This led to a prosecution of the MHPA by the Environment Agency under the Water Resources Act 1991. The MHPA pleaded guilty and was fined £750,000. No proceedings were instituted against the owners, master or crew of the tanker. Concerns were voiced in some quarters, notably by the salvage industry, that the Act represented an unexpected source of potential criminal liability for shipowners and seafarers in circumstances where they would not incur liability under merchant shipping legislation. To date there has been no instance of shipowners or seafarers being prosecuted under the 1991 Act.

Uruguay

N/A

USA

See the answer to question 10. Mere negligence without wilfulness can lead to a successful prosecution under existing U.S. and state environmental criminal laws. Because many of the environmental laws in this country are based on "no-fault" or "strict liability" statutes the prosecutor need not establish the requisite mental state of criminal conduct ("mens rea") in order to proceed with the case.

Question 12:

If the maritime accident outlined in Question 9 occurred outside your State's Territorial Seas, although damage occurs in areas under your State's jurisdiction, would the procedures involved be different?

Argentina

The proceedings are the same.

Australia

In terms of pollution incidents occurring within Australia's EEZ, the procedures would be the same.

Bulgaria

According to art. 13 of CSC the flag law ("lex banderae" – lat.) is applicable when the act ions on board occurred in high sea or in neutral territory. Consequently, the applicable law is the foreign-flag law. In general, "lex banderae" is the most utilized provision in many countries to determinate the applicable law in the case of tort in high

sea. Bulgarian legislation does not consist a general rule related to the applicable law in the case when the tort had not occurred under Bulgarian jurisdiction but some consequences have occurred in Bulgarian waters. In Bulgarian Civil code draft is provided that if the action is committed in the territory of one country but the harmful result occurred in the territory of another country (in the case outlined, in Bulgarian territory), the applicable law is the law which is more favorable for the injured person.

Brazil

No, the procedures involved will be the same as applied in question nine.

Canada

Under the *Canada Shipping Act*, the jurisdiction to prosecute exists with respect to a pollution incident anywhere in Canada's exclusive economic zone, not just its territorial sea. If Bill C-15 passes Parliament in its current form, the jurisdiction under the *Migratory Birds Convention Act* and the *Canadian Environmental Protection Act*, *1999* will be similarly expanded.

Chile

No.

China

(1) About the investigation procedure

There is no difference between the procedure of the accidents occurred in the Territorial Seas and the one of the accidents occurred outside the Territorial Seas.

If the maritime accidents happen in the Contiguous Zones, Exclusive Economic Zones and Continental Shelves and violate Chinese law, then the Chinese Government may exercise the right of hot pursuit according to the provisions of article 13 of Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone (LTSCZ) and the provisions of article 12, section 2 of Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf (LEEZCS).

MTSL and RIHMTA are applicable in the coastal waters of China, which contains the Territorial Seas and all other waters under the jurisdiction of China.

MEPL shall apply to the Internal Waters, Territorial Seas and the Contiguous Zones, Exclusive Economic Zones and Continental Shelves of China and all other sea areas under the jurisdiction of China. This law shall also apply to areas beyond the sea areas under the jurisdiction of China that cause pollution to the sea areas under the jurisdiction of china.

From the above legislation, we can conclude that if the maritime accident outlined in question 9 occurred outside the territorial seas, the investigation procedure won't be different.

(2) About criminal procedure

There is almost no difference toward the criminal procedure, neither. Article 16 of CPL stipulates that Provisions of this Law shall apply to foreigners who commit crimes for which criminal responsibility should be investigated. If foreigners with diplomatic privileges and immunities commit crimes for which criminal responsibility should be investigated, those cases shall be resolved through diplomatic channels. So only when the latter situation appears, the criminal procedure is different from the ordinary one.

Denmark

If the accident has occurred outside Danish territorial waters and assuming that the Danish authorities have jurisdiction to investigate the accident, the Division for

Investigation of Maritime Accidents is required to carry out its investigation in cooperation with the authorities of the flag state.

Dominican Republic

If the vessel enters into Dominican waters and/or calls **at* a local port, the procedures involved would be the same; but if the vessel does not enter into territorial waters neither calls **at* our ports, the State most likely would only seek pollution compensation.

Finland

Environmental crimes committed in the economic zone of Finland are governed by the Penal Code 48:10. This rule (L 1067/2004) stipulates that fines may be imposed instead of jail sentences in some cases.

France

The proceedings will not be different.

Germany

If the maritime accident outlined in Question 9 occurred outside your State's Territorial Seas, although damage occurs in areas under your State's jurisdiction, would the procedures involved be different?

Greece

No; the general provision which is put into effect by the Greek Law for the Protection of the Sea Environment is that the aforesaid processes gain implement even if the damage occurred by a foreign-flag vessel outside the State's Territorial Seas. (except if an International Convention signed by Greece expressly contains a different provision; in such case the Convention's provisions prevail)

Hong Kong

Under Section 46 of Cap.313, the owner and the master of the vessel will be responsible for the discharge of oil or mixture containing oil into the waters of Hong Kong. Normally, MD would seek indemnity from the vessel's P&I club.

However, MD does not have the jurisdiction to carry out any on-board investigations/inspections if the maritime accident outlined in question 9 occurred outside the waters of Hong Kong and if the vessel is not in the waters of Hong Kong.

MD would provide the relevant information/evidence, available to us, to the flag State of that vessel and request them to carry out an investigation of such a case.

Italy

The CLC 1992 applies also to the exclusive economic zone and, in Italy where the EEZ has not been established, in an area beyond and adjacent to the 12 miles territorial sea extending not more than 200 nautical miles (see Article II(a)(ii) of CLC 1992).

Japan

In principle, the criminal procedures mentioned in Question 11 will not be applied if the case occurred outside of territorial waters.

However, in case an accident occurs in the Japanese EEZ, the Law Relating to the Prevention of Marine Pollution and Maritime Disaster, which covers the requirements of the MARPOL Convention, is applied, based on article 3 of the Law on the Exclusive Economic Zone and the Continental Shelf.

In addition, in cases where the damage occurs in the EEZ and territories including the territorial waters of our State, the Law on Liability for Oil Pollution Damage, which

implements the requirements of the CLC and FC Convention, will be applied, and the ship owner will be subject to pollution damage claims wherever the accident occurred.

Korea

In theory, Korean government will not exercise sovereign power over the accident occurred outside the territorial waters. However, it seems that if the result of the oil pollution damages occurs in Korean territory the negligent seafarer will be subject to criminal charge according to the Korean Marine Pollution Prevention Act.

Nigeria

The state will Claim for Compensation under the International Civil Liability and Compensation system.

Norway

Reference is made to the answer to question 2. Normally the same procedures will be followed.

South Africa

If damage occurs within South Africa's jurisdiction and the ship and crew involved in that incident subsequently enter South Africa's jurisdiction, the owner and crew members will be treated in accordance with the relevant acts and conventions as set out above. In the event that the ship and / or crew do not enter South African territorial waters and therefore remain outside of South Africa's jurisdiction, the only basis upon which seafarers could be charged is in the event that they subsequently enter a country with which South Africa has concluded an extradition treaty covering offences of this nature.

The only exception to the above is in the event of an intervention in terms of the Intervention Convention. The enabling legislation in South Africa has not effected any substantial changes to that Convention.

Sweden

Sweden has jurisdiction in the Exclusive Economical Zone in respect of oil pollution. However, other coercive measures are applicable than those applicable for to pollution in territorial waters. It must be clear that the pollution originated from a specific Vessel and that the pollution has caused or will cause severe damage to Swedish interests. Measures could also be taken if the pollution has caused or will cause considerable damage to the Marine environment. Furthermore, if the Captain withholds vital information, actions may be taken against the vessel, should the circumstances so demand

UK

12.1 Jurisdiction of the MAIB

The jurisdiction of the MAIB is not limited to accidents occurring in the territory of the UK but could include accidents causing pollution within territorial limits. The MAIB may also investigate accidents involving UK ships wherever they occur. The role of the crew in relation to the inquiry might well depend on whether they had evacuated the vessel and been brought ashore in the UK.

12.2 Jurisdiction of the MCA – Secretary of State's Representative (SOSREP)

The Secretary of State's Representative (SOSREP) is appointed on behalf of the Secretary of State and may oversee, control, and intervene where necessary, and exercise "ultimate command and control" in connection with salvage operations within UK waters involving vessels or fixed platforms where there is significant risk of pollution. Some of the more significant SOSREP powers, with respect to areas outside territorial waters, are outlined below.

12.2.1 Powers of intervention – Power to Intervene and Issue Directions

Under the MSA 95[71] the SOSREP may, for purposes of preventing or reducing the risk to safety or of pollution by a hazardous substance, give directions to take action of any kind whatsoever; this includes the destruction of a vessel. This power applies, with respect to safety, in UK territorial waters (up to 12 miles from the UK coast) and, with respect to pollution, in the Pollution Zone (up to 200 miles from UK coast or to the international median line).

12.2.2 Powers of intervention – Power to establish Temporary Exclusion Zones

The SOSREP may[72], for the purpose of preventing significant damage to persons or property, or pollution or reducing such risk, establish a Temporary Exclusion Zone. This can apply to any ship, structure or other thing which must be wrecked, damaged or in distress. The power applies within the UK Pollution Zone (up to 200 miles from the UK coast or to the international median line).

12.2.3 Case Study: Ever Decent/Norwegian Dream

In August 1999 the *Ever Decent* (Panamanian flagged container ship) and the *Norwegian Dream* (Bahamian registered passenger ship) collided off Margate. The precise location was outside UK territorial limits but within the UK pollution zone and therefore the Dover Maritime Rescue Co-ordination Centre had jurisdiction to co-ordinate. The damage to the Ever Decent was such that it led to a fire which started at the collision point and soon after became out of control. The SOSREP formally intervened under S. 137 of the MSA 95, firstly to require salvage plans to be approved by the MCA; this was due to the risk of significant pollution (the mixed containers on board the Ever Decent contained significant quantities of Hazardous cargo, particularly as the seat of the fire was close to two containers with 32 tonnes of potassium and sodium cyanide). Subsequently the SOSREP intervened in order to establish a Temporary Exclusion Zone around the casualty preventing any non salvage related vessels from entering the area. A Salvage Control Unit (SCU) was also set up comprising of the SOSREP, MCA Pollution and salvage officer, owners/insurers representative, Salvage Manager and Environmental Liaison Officer which monitored and reduced the fire's intensity over some days before an escorted passage plan to Zeebrugge was finally approved. Throughout the operation the *Ever Decent* maintained a position outside UK territorial waters but still within the UK pollution zone.

Uruguay

No.

USA

The U.S. considers the Exclusive Economic Zone (200 mile limit) is the area coming under U.S. law for the purpose of OPA civil liability. However, in order to invoke the criminal statutes of the United States, with some exceptions relating to violent crimes, the criminal act must have occurred within the territorial maritime boundaries of the United States, or must have resulted in damage within the territorial boundaries, which are 12 miles. It is possible that the individual states would not have jurisdictional powers unless the pollution directly threatened and/or affected their geographic area. Individual states criminal jurisdiction generally extends 3 miles out to sea.

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[71] *Ibid.*, Schedule 3A para. 1 (inserted by the Marine Safety Act 2003).

[72] Merchant Shipping Act 1995 s.100A (inserted by the Merchant Shipping and Maritime Security Act 1997).

Question 13:

Regardless whether your State's investigation process utilises the criminal justice system, or any other system, will the relevant vessels crew members be detained? If so:-

a. What is the legal reason for the detention?
b. What rights will the accused/detained crew member have during the process, and do such rights differ from those available to the citizens of your State?
c. Will full reason and/or charges be provided to those detained?
d. What is the expected length of such detention?
e. Where and how will the seafarers involved be detained?
f. What access to legal advice and/or defence will such personnel have available to them?
g. Will the vessels representatives, agents, family members, labour organisation representatives, or lawyers be given immediate and full access to those detained?
h. Will the relevant seafarers have the legal right not to answer questions that may be considered self-incriminating, if so advised?

Argentina

Australia

a. Possibly, however in most cases the crew-member would be released subject to bail or bond conditions.

b. The right of appeal exists, such rights are available to any person charged with an offence.

c. Yes.

d. If detained, the period would be until the matter can be brought before the Courts.

e. This is a mater for the Court to determine.

f. Full access to legal representation.

g. Yes.

h. Yes.

Bulgaria

a. The legal reasons for the detention of those seafarers are specified in CSC and in PPC, as follows: art. 89, p. 3 of CSC; art. 90 of CSC; art. 202 of PPC (see the analyse in the answer to Question 5, p.5-6)

b. The rights of detained/accused crew members during the trial process do not differ from the rights of Bulgarian citizens. Their rights are stipulated in PPC. According to art. 206 of PPC the detained person has the rights as follows: to know the reason of detention; to give explanations; to make references, notices or objections and to claim the prosecutor's provisions/the investigators' provisions when they harm his rights and legal interests.

According to art. 51 of PPC the accused has the rights as follows: to know the reasons and the proofs of his accusal; to give explanations; to present proofs; to take part in the penal procedure; to make references, notices or objections; to have a last plea at the bar; to claim the tribunal acts and acts of investigation authorities; to have a defender and to have a last plea. The defender could participate during the investigation process on demand of the accused.

c.

d. The captain has the right to detent the suspected person/seafarer and to

surrender him to the authorities in the first Bulgarian harbor. When a crime is committed on board during the stay in Bulgarian harbor, the captain has to surrender the suspected person to the respective authorities.

In accordance with the General rules of PPC the investigator could detent the suspected person without a prosecutor's order when the crime is considered as a crime of general nature and the preliminary procedure is mandatory (for ex., when the suspected person was detained during the crime or after the crime commitment). In the detention provision the investigator should motivate the detention and has to advise the procurator no later than 24 hours (art. 202 of PPC). The procurator has to approve immediately or to repeal the detention. If the detention was made because of grievous crime of a general nature, the prosecutor may prolong this time limit to 3 days. In the case that during this period a legal action is not initiated, the investigator has to exempt the detained person.

e. According to art. 89, p.3 of CSC the captain has the right to enterprise all measures needed if a person on board does not observe his legal orders. If a member of personnel on board endangers the vessel's safety or the safety of other persons and properties there in, or this action is considered as a crime according to Penal Code of Bulgaria, the captain has the right to detent the seafarers and other persons in question in isolated detention rooms.

The captain has the right to detent the suspected person/seafarer and to surrender him to the authorities in the first Bulgarian harbour. When a crime is committed on board during the stay in Bulgarian harbour, the captain has to surrender the suspected person to the respective authorities.

f. The access to legal advise and/or defence are regulated in general Bulgarian legislation. According to art. 51 of PPC the accused has the right to have a defender/advocate. The defender may participate during the investigation process, if the accused demanded.

g. There is a legal regulation related to defence by legal defender and by husband/wife, ascendant or descendent of the accused (art. 67 of PPC). The representatives of employer and crew members could participate in the penal procedure as civil defendants, when a civil action had been proceeded against them (art. 65 of PPC).

h. Yes, they have the right to not answer questions that may be considered self-incriminating.

Brazil

a. When a criminal process is taken, detentions may occur according to the situation. Brazillian Criminal Law is based on presumption of innocence and, thus, no one is subject to detention before a final judgment is issued unless caught *in flagrante delicto* or in other very specific cases (which authorizes the preventive detection).

b. What rights will the accused/detained crew member have during the process, and do such rights differ from those available to citizens of your State? The human rights will be assured to the accused/detained person. Basically, the rights are the same of a Brazilian citizen, such as: privilege against self-incrimination, full defense, process under adversarial system, due process of law, etc.

c. Yes, they will.

d. The flagrant detention is supposed to take ten days. But, it may change for a preventive detention. When a preventive detention is applied, it is supposed to take, at maximum and theoretically, eighty one days. The preventive detention is supposed to take thirty days.

e. Either civil or federal police station, according to the case.

f. Basically, the person can indicate a lawyer or a public attorney will be automatically constituted.

g. Not exactly. His lawyer can have this access at anytime, but other people must observe the visitors' regulations (there may be specific time for visitors).

h. Yes, the accused person has the right of not responding self-incriminating questions.

Canada

a. Other than the authority of the TSB to detain witnesses for interviews as part of their investigations and the possible jurisdiction of other authorities to act similarly, the legal reason for detention of a crew member would typically be arrest in contemplation of charges being laid against such crew member and the ultimate trial of such charges.

b. An accused crew member would have the same rights afforded to any other accused, regardless of whether he or she is a Canadian citizen. See the rights described under question 5 above.

c. Yes.

d. This depends on the nature of the incident and the charge.

e. Detention of an accused seafarer may be in a penal institution, unless the Court with the jurisdiction over the prosecution permits release on bail.

f. They will be afforded the ability to retain counsel and will have the ability to access the legal aid system available in the province of arrest.

g. Limited and restricted access will be provided. See also the answer to f.

h. Yes. Section 11 of the Canadian Charter of Rights provides that any person charged with an offence has the right not to be compelled to be a witness in proceedings against that person in respect of the offence. All questions must be answered in interviews by the TSB but information obtained in such an interview may not be used in criminal prosecution.

Chile

No, the relevant vessel crew members cannot be detained, but whilst they have not declared in the Investigation, the Maritime Authority will not allow the ship to sail.

China

a. The legal foundations of the detention are: article 8 of LTSCZ, article 12 of LEEZCS, article 14, article 15, article 133 and article 136 of Criminal Law of the People's Republic of China (CL), article 47 of MTSL, article 15, article 18 and article 29, section 2 of RIHMTA, and article 24 of TRIPSA.

b. According to the provisions of CPL, the accused/detained crew members have such rights:

(1) Right to life, Right to health and other Rights of Person can not be harmed during the detention period.

(2) Right of defense. It contains Right of Know, Right of self-defense, right of engaging a lawyer, and right of obtaining legal aid.

(3) Right of fair trial. Criminal procedure law of china has set up withdrawal, open trial regulations and other rules to ensure that criminal defendant could get a fair trial.

c. Yes.

d. It is depended on the time of the investigation needed by the maritime administration organizations of the People's Republic of China.

e. According to the provisions of CPL, if the seafarers resist detention, the persons who carry out the detention have the right to take some compulsory means, including the use of weapons.

f. According to the provisions of article 32, article 34 and article 39 of CPL, the

detained seafarers can exercise the right to defense by himself/herself, entrust one or two persons as his/her defenders. Under certain circumstances, the people's court may designate a lawyer duty-bound to provide legal assistance to defend him/her. The accused may refuse to have his/her defender continue to defend him/her and may entrust his/her defense to another defender during a trial.

g. According to the provisions of CPL, except for the situation of obstructing investigation of a crime or having no way to inform, the concerning organizations should inform the seafarers' company and family members of the reason and place of detention within 24 hours. The right of a criminal suspect to entrust defenders in public prosecution accrues on the day when the case is submitted for examination and prosecution. The accused in a private prosecution has the right to entrust defenders at any time.

h. According to the provisions of law in china, the seafarers have obligations to honestly answer the questions during the investigation process. Therefore, they can not refuse to answer the questions during this period.

During the criminal procedure, the seafarers have not got Mute according to present law in China. However, article 46 of CPL makes a clear provision on the issue. In the decision of all cases, stress shall be laid on evidence, investigation and study; credence shall not be readily given to oral statements. The accused can not be found guilty and sentenced to a criminal punishment if there is only his/her statement but no evidence; the accused may be found guilty and sentenced to a criminal punishment if evidence is sufficient and reliable, even without his/her statement. Therefore, not answering questions can not be considered self-incriminating. The seafarers can be convicted of a crime only when there are enough evidences to prove the results.

Croatia

a. Facilitating investigation.

b. Foreign and domestic citizens have equal rights.

c. Yes.

d. For the duration of the first degree proceedings carried out as urgent procedure.

e. The procedure is carried out at the Harbour-Masters Office at which territory accident occurred.

f. The same rights are exercised as for domestic citizens plus support of their consulate's personnel and assistance of an authorized court interpreter.

g. Yes.

h. Yes.

Denmark

As mentioned under item 5 above, seafarers may under certain circumstances be detained:

a. see item 5 above.

b. A foreign seafarer will have the same rights as Danish citizens as set out in the Administration of Justice Act, including the right not to incriminate himself, the right to a lawyer and the right to write unchecked letters to – among others – the Danish Ombudsman and the and Minister of Justice.

c. Yes

d. The detention must be renewed at least every four weeks. The detention can under certain circumstances be upheld until the case has been tried and decided by the courts, i.e. potentially several months.

e. The seafarer will be detained in a prison.

f. The seafarer will have full access to legal advice from a lawyer.

g. The seafarer will be allowed visitors.

h. The seafarer will have the right not to answer questions, which may incriminate the who).

Dominican Republic

a. Preventive imprisonment due to investigation. - 48 hours maximum after which an "habeas corpus" is in order.

b. The same will have the same rights available to Dominican citizens: right to make at least one telephone call, right to be assisted by a lawyer while being interrogated, etc.

c. Reasons are normally provided by the investigators and charges within 48 hours as from time of their detention.

d. A maximum of 48 hours without having placed any charges against them. unlimited if charges had been placed (a bail bond would become handy to obtain their liberty under bond **once* charges are placed).

e. Most likely at the Harbourmasters/Port Commanders office.

f. Technically, a D.A. assistant should be available. In practice this does not occur all the time. The personnel is advised to contact their local agents and/or P and I local correspondents in the case of a detention.

g. They should.

h. Yes.

Finland

a. Mainly since there is a probable cause that the suspected committed the crime, which could lead to imprisonment for two years or one year provided that it is likely that the suspect tries to escape, tamper with evidence or otherwise obstruct justice.

b. No.

c. Yes.

d. According to the Coercive Measures Act 13 §: At noon on the third day after the day of detention a court hearing shall take place in order for the court to decide whether the suspect shall be declared remanded for trial.

e. By the police according to law.

f. Full access. The suspect may appoint his own legal counsel. Legal counsel may also be provided to him. The State might in some cases provide the legal counsel free of charge.

g. Yes.

h. Yes.

France

The relevant vessel crew members may be detained before judgement (if incurred prison sentence is equal or over 3 years):

a. to avoid trouble to public order, to avoid communication with the owner and/or charterer and to avoid loss of piece of evidence before investigation

b. they have the same rights as those available to french citizens: crew members will be assisted by a lawyer, the lawyer will visit him in jail. He will refer the investigating Magistrate's orders to the Judge of Liberties and will insure defence in every step of the case in all hearings and investigations.

c. Yes

d. The detention cannot exceed 4 months if a person has never been condemned before and if the possible prison sentence is not more than 5 years. This delay may be extended to 4 more months by a motivated order of the Judge of Liberties after a debate with the seafarer's lawyer.

e. The seafarers involved may be detained in state prison: "House of Arrest". They are separated from the persons already condemned and they would have an individual cell.

f. They will be assisted by a lawyer.

g. The lawyer will have immediate access to those detained but not the vessel 's representatives agents and labour organisation representatives. The family's members visits cannot be refused after one month detention except for particular reasons which the Judge will have to explain in his refusal order and this order may be appealed before the President of The Court of Instruction who will judge it within 5 days.

h.The seafarers have the right to refuse to answer any question out of the presence of their lawyer and they have the legal right not to answer questions.

Germany

a .Pollution of the waterways, risk of escape.

b. They have all the right every German citizen has.

c. Yes

d. The trial has to start within 6 month after detention. 6 month is the longest time without trial. The period of detention for pollution is 5 years at the longest. From time to time there reviews of a detention order by law.

e. As German citizens as well in a prison.

f. Every access. They are allowed to contact legal advice around the clock.

g. Yes

h. Yes

Greece

Hong Kong

a. Please refer to the answers to questions 5 to 7 above.

b. Everyone is equal before the law. A seafarer has the same rights enjoyed by the Hong Kong residents (e.g. right to bail).

c. Should one be detained and brought to court, he should have been charged with a copy of the holding charge(s) served to him. Even if no plea is to be taken, the charge(s) would be read and explained to him in court. He would be informed and/or served with copies should there be additional and/or amended charges in due course. The detainee should also be informed of the reasons why the court has refused bail and that he has the right to apply for bail in the High Court.

d. There is no fixed period of detention. However, the court will make enquiry as to the reasons and length of the adjournment/detention to ensure no one will be detained longer than necessary.

e. Should bail be refused, the seafarers will be handed over to the Correctional Services Department ("CSD") for detention. However, for the first 3 clear days, the police may apply for the seafarers to be detained in police custody to facilitate procedures like Identity Parade to be conducted.

f. Arrangements can be made with CSD/the police for the detainees to contact an/or see their legal representatives to seek advice.

g. If in CSD custody, arrangement can be made for the persons mentioned to visit the detainee.

h. If in police custody, the detainee has the right to seek advice from his legal representative. If the investigation will not be hindered, he may be allowed to contact and/or make phone calls to other persons like his family members.

i. Everyone has the right of silence. The seafarers will be reminded of this right before they are to answer any question which may incriminate them.

Italy

Detention prior to a final judgment is permitted in case a person is caught in the act of committing a crime. It is compulsory in case the claim is punishable with life imprisonment or imprisonment for more than 5 years, as well as in respect of specific crimes. It is permitted in respect of crimes punishable with imprisonment up to 3 years. There are then a number of other situations, specified in the Code of Criminal Procedure, in which arrest is permissible, in which event notice must be given to the Public Prosecutor, but within 48 hours validation of the arrest by the Court must be requested.

a. See comment in the preamble to Question 13.

b. Foreign citizens have the same rights of Italian citizens.

c. Yes. A foreign citizen is entitled to have the reasons translated in his mother language or in a language known by him. Interrogatories are conducted with the aid of an interpreter.

d. The length of the detention is determined by the continuing existence of the reasons for which it was decided.

e. There is no special rule for seafarers. Detention may take place in prison, at the domicile of the person detained, or at a different temporary domicile.

f. Legal assistance may be provided by an advocate appointed by the person incriminated or, failing any such appointment, by a lawyer appointed by the Magistrate.

g. Except in some very limited cases, a person who is detained is entitled to visits of persons of his family and of his lawyer, in accordance with the regulations of the prison where he is detained. Following the express authorization of the Magistrate, the right of visit may be granted also to the agent of the shipowner and labour organisations.

h. Yes. There is a general right not to answer to any question.

Japan

As referred in Question 5, the crew may be arrested under certain conditions. The answers to each question from a. to h. are shown as follows:

a. Arrest or detention under The Code of Criminal Procedure

b. The accused or the suspect in custody has the same legal rights as a Japanese accused or suspect.

c. When the suspect is arrested upon a warrant of arrest, the warrant shall be shown to him.

When a judicial police officer has arrested a suspect upon a warrant of arrest or received a suspect who was arrested upon a warrant of arrest, he shall immediately inform the suspect of the essential facts of the crime and of his being entitled to select a defense counsel, then provide him an opportunity for explanation. When the suspect who was arrested has been transferred to a public prosecutor, the public prosecutor shall immediately inform him of the essential facts of crime and of his being entitled to select a defense counsel, then provide him an opportunity for explanation before requesting a judge to detain him.

d. Arrest: 3 days

Detention: 10 days in principle. However if unavoidable circumstances exist, a judge may extend the period within the 10 days.

e. The suspect will be detained at a facility operated by the Japan Coast Guard, etc. If a judge determines further detention is in order, the suspect will be transferred to a detention house operated by the Ministry of Justice, etc.

f. The accused or the suspect may appoint a counsel at any time.

g. The accused or the suspect in custody may, without any official being present, have an interview with or deliver t/ receive documents or articles from his/her counsel or a person who is going to be his/her counsel, upon the request of the person entitled to appoint a counsel.

The accused or the suspect may have an interview with, deliver to/receive documents or articles from the vessel's representatives, agents, family members, or labor organization representative. But when there is reasonable ground to suspect the accused or suspect may escape or destroy evidence, a court or judge may, upon request of a public prosecutor or ex-officio, forbid him to interview any other persons other than counsel, examine documents or other things he may deliver to or receive from such persons, forbid him to deliver or receive such items, or seize them.

Article 38 of Constitution states, "No person shall be compelled to testify against himself." In addition, Article 198 of Code of Criminal Procedure states, "In the case of questioning, the suspect shall, in advance, be notified that he is not required to make a statement against his will.

Nigeria

a. To enable the Administration to carry out the preliminary Inquiry and forward Report of its investigation to the Federal Ministry of Transport. Consequently a marine Board of Enquiry is set to further interview the crew members as witnesses to the marine accident.

b. The arrested crew members may be allowed to stay on board their vessel if the ship is still habitable, and the Ship Agent may also be allowed to sort out their accommodations. The state usually withholds the passport of the crew and allow them to freely move around within the state. They are also allowed access to their lawyers.

c. Under Section 387 of the Merchant Shipping Act-Notice of detention of a foreign ship is given to the consular officer for the country to which the ship belongs at or nearest to the port where the ship is for the time being and such notice shall specify the grounds on which the ship has been detained or the proceedings have been taken.

d. The detention period depends on the time the PIand the Marine Board of Investigation is concluded

e. The Seafarers are not necessary under detention by the state except that they are not allowed to leave the country. They have access to their agents, lawyers etc.

f. They have access to their agents, lawyers, family members etc

g. They have full access to all persons mentioned here.

h. The relevant Seafarers are "cautioned" and put under oath like any other witness.

Norway

a. Ref. answer to question 5.
b. Ref. answer to question 8.
c. Yes
d. Several months
e. In custody or the person will be asked not to leave the country
f. Will have right to a lawyer
g. No, normally only lawyer
h. Yes

South

a. The crew members will not be detained unless they are accused of an offence as set out above.

b. The rights of any person accused or detained are identical to that enjoyed by South African citizens and are set out above.

c. to h. Seafarers are not detained and accordingly these questions are not applicable. If they are charged and arrested, then the rights they enjoy are as set out above.

Sweden

a. Usually, crew members are not taken into custody. A sentence to 1 year's imprisonment is a condition for being placed in custody. Reference is also made to item 6 above.

b. The rights are the same as for Swedish citizens.

c. Yes

d. The time in custody is, of course, subject to the time needed for the investigation process. The prosecutor usually has two weeks within which to present his case to the court and during this period the defendant may be required to remain in custody unless the prosecutor decides otherwise.

Sweden has only had one case of detained crew members. They had to remain in custody for 2 _ weeks but were immediately released after the first court hearing, since it was not considered necessary to keep them in custody any further.

e. Usually in police custody.

f. They are entitled to be assisted by a public defence lawyer at the cost of the state, but the appointment of a defence lawyer of their own choice and at their own expense is also possible.

g. A defence lawyer always has the right to visit his client and usually other visitors too. However, depending upon restrictions imposed because of the investigation as such, family members and others may be denied visiting rights.

h. Yes

UK

a. There can be no arrest or detention under English law without justification under a specific legal power.[73] There can therefore be no arrest or detention unless there is reasonable cause to believe that an arrestable offence has been committed or an arrest warrant has been obtained. In either case it would be necessary for the circumstances to involve a suspected or alleged offence of a serious nature and punishable by imprisonment.

b. As explained in 5.2 above, the accused/detained crew member will have rights guaranteed under various statutory provisions such as PACE and associated codes of conduct as well as under legislation such as the Human Rights Act 1998. As explained under 5.3 above, foreign nationals have additional protection under PACE Code C. There are also provisions under PACE Code C which deal with the need to make interpreters available where necessary.

c. When a person is arrested he must be informed of the reasons for such arrest. This must be either at the time of arrest or as soon as practicable thereafter. If this information is not given the arrest is unlawful. Although the duty is to give information "at the time of the arrest" this does not have to be fulfilled at the precise moment of arrest. The information may be given during a reasonable period before and after that moment.[74]

d. The length of detention after arrest will depend on the circumstances and nature of the offence in question. The governing principle is that persons in custody must be dealt with expeditiously and released as soon as the need for detention has ceased to apply. Initially, the custody officer is authorised to detain an arrested person at a police station for such period as is necessary to enable him to decide what action to take.[75]

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[73] See para 5.1 above.

[74] Blackstone's Criminal Practice 2005, p.1043.

[75] Police and Criminal Evidence Act 1984 s.37(1).

Generally this period should be a maximum of 6 hours. Unless prolonged detention has been authorised (where there is a "serious arrestable offence" and certain criteria are fulfilled), a suspect may not be held in detention without charge for more than 24 hours. When that period expires, if the suspect has not been charged, he must be released either on bail or without bail.[76]

e. Seafarers may be detained at a police station in accordance with the procedures outlined above.

f. All detainees must be informed that they may at any time consult and communicate privately with a solicitor, whether in person, in writing or by telephone, and that free independent legal advice is available from the duty solicitor.[77] The exercise of this right may be delayed where "Annex B" applies[78]. Further, where the detainee is a foreign national, consular officers from the country in question may visit the detainee in police detention and, if required, arrange for legal advice. This visit will take place out of the hearing of any police officer.

g. A foreign detainee may be visited by a consular officer in private. Additionally, any person arrested and held in custody at a police station or other premises may, on request, have one person known to them (or a person likely to take an interest in their welfare) informed, at public expense, of their whereabouts as soon as practicable. There are restrictions on this right in certain circumstances (where a serious arrestable offence is concerned) but such restrictions must be applied in accordance with legal safeguards. The detainee may receive visits at the custody officer's discretion; these should be allowed when possible, subject to sufficient personnel being available to supervise a visit, and subject to any possible hindrance to the investigation. Where a friend or relative (or a person with an interest in the detainee's welfare) enquires about their whereabouts, the information must generally be given. Further, where a person does not understand English, the duty officer is responsible for making sure that appropriate arrangements are in place for provision of suitably qualified interpreters.[79]

h. *1. Out of Court silence*

At common law, in addition to the right to silence, no inferences were generally permitted to be drawn from the exercise of the right to silence (whether during investigations or trial). This has been altered by legislation which specifies circumstances in which "adverse inferences" may be drawn from the exercise of the right to silence.[80] An example of such "adverse inferences" include the situation where the accused withholds his defence under interrogation but presents it at trial. It is now accepted that the adverse inference that may be drawn is a general inference of guilt. Inferences before a suspect is charged may not be drawn except "*on being questioned under caution by a constable*". The caution (which sets out the risks involved in not mentioning facts later to be relied upon) is as follows:- "*you do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence*".

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[76] *Ibid.*, s. 41(1) and (7).

[77] *Ibid.*, Code C, Section 6.

[78] Annex B applies when a person is detained in connection with a "serious arrestable offence", has not yet been charged, and an officer of superintendent rank or above has reasonable grounds to believe that certain consequences may arise if the right is exercised (for example that exercising the right will interfere with, or physically harm, another person).

[79] Police and Criminal Evidence Act 1984, Annex B, Code C.

[80] Criminal Justice and Public Order Act 1994.

2. Privilege against Self-Incrimination

No witness is bound to answer questions in court if to do so would, in the opinion of the court, have a tendency to expose him to any criminal charge, penalty or forfeiture (of property) which the court regards as reasonably likely to be brought or sued for.[81] The witness may not claim privilege on the basis that his answer to the question would expose him to civil liability,[82] nor does the right of privilege extend to answers which would expose the witness to criminal liability under foreign law. The witness may claim the privilege only after he has been sworn and been asked a particular question. He cannot refuse to take the oath on the grounds of privilege.[83] There are some exceptions to this rule which require certain individuals, in specific circumstances, to answer questions even where this may incriminate them. In such circumstances the court must balance the public interest in obtaining the information and the "right to silence" to be affected and the merits of preserving such right.

Uruguay

a. Only as responsible of an offence that under our Penal Code is of a criminal nature.

b. The right to a fair process; of a legitimate defense. No, the rights do not differ from those available to citizens of our country (Uruguay).

c. Yes.

d. The length of detention cannot be advanced because it would depend on various and different circumstances (importance of the incident, and whether it was a consequence of negligence or willful misconduct etc.)

e. In principle they would be detained at a prison located in the jurisdiction of the place where the incident happened. They would be treated exactly as any other person.

f. They would have legal advice available at all times. If the defendant can not pay for the services of a lawyer, the Court has to provide an official lawyer to act as counsel.

g. Yes.

h. After detention, and before the Criminal Court has ruled , only the defendant's lawyers can be in contact with the detained persons. After the indictment, people in jail has the right to visits, under certain rules.

USA

a. The seafarer may be charged as a criminal defendant or, as mentioned in prior questions, detained as a material witness and federal or state law.

b. The rights of the seafarer should be the same as citizens of the U. S.

c. U. S. law requires the furnishing of copies of criminal complaints, indictments information and all other charging documents applicable to anyone charged with a crime. The seafarer is also entitled to copies of any statements made by him to authorities. Any seafarer may be detained as a "material Witness" would be entitled to a copy of the subpoena designating him or her as a material witness. A seafarer not versed in English language or our jurisdiction could find the process too complex to handle. Competent criminal counsel should be able to assist seafarers in such circumstances

d. U.S. law requires "a speedy trial" of anyone charged with the crime. However, if there is a voluntary waiver of this law there is no specific time limit applicable. With

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[81] *Blunt* v. *Park Lane Hotel Limited* [1942] 2 KB 253.

[82] Witnesses Act 1806.

[83] *Boyle* v. *Wiseman* [1855] 1 Exch 647.

respect to those seafarers detained as material witnesses, there is no specific time period by which they must be released. In this regard, once a seafarer is designated as a "material witness", his or her counsel needs to negotiate with the prosecutor to either release their client or to conduct a deposition under Rule 15 of the Federal Rules of Criminal Procedure as soon as practicable. If the prosecutor refuses to release a material witness or refuses to conduct a Rule 15 deposition, counsel for the seafarer would normally move the Court for an order to either release the seafarer or have his deposition taken forthwith and then to have the seafarer released The problem area occurs where detained seafarers are not designated as "material witnesses", but are nevertheless not permitted to leave the country because they have passports and seamen documents have been taken by the authorities. In such instance counsel for the seafarers must negotiate, and at times pressure of the prosecutors for the speedy release of their clients. If all else fails, counsel must move the Court for the release of the seafarer similar to the procedure utilised for material witnesses.

e. Frequently the detainees are kept in hotels, sometimes under guard, although this procedure has not been insisted upon recently by U.S. authorities, at the expense of the owners. However, the place of detention can greatly vary depending on what authority is detaining the crew member.

f. US law does give the right to legal counsel to all, and council would be provided at no cost to the defendant, if such defendant cannot afford counsel. However, the expertise of counsel can vary. Frequently owners in conjunction with their underwriters correspondents make recommendations for competent counsel to be provided to seafarers who are detained during an investigation.

g. Usually legal counsel will be given access to the defendant although not necessarily on an immediate basis (or as quick as the detained individual might desire). As far as the others mentioned in the question, it would be expected and access will be in accordance with the visit of policy of the detention facility in which the crew member is held and some variations exist based on the local conditions where the flight facility is located

h. Yes, as provided under the U.S Constitution. However, that right can unwittingly be waived by a defendant and particularly after sufficient warnings have been given to the seafarer regarding them the ability to use anything said in a court of law against the defendant (known as "Miranda" warnings which are based on a Supreme Court decision outlining prosecutorial responsibility versus constitutional rights).

Question 14:

Does your Association have any comments, suggestions or recommendations on this subject?

Argentina

Australia

Not at this stage. Comments and suggestions will be sought from interested parties on any proposals canvassed by the working group.

Brazil

No.

Canada

The Canadian Maritime Law Association has previously expressed its position on

this issue in the context of the CMI's work on the subject of International Places of Refuge. The Association's position is that seafarers should not face penal liability as a result of pollution incidents, as this may serve to divert attention from the principal objective of minimizing the possibility of a distressed vessel causing an environmental catastrophe, such as by discouraging a vessel's master from seeking refuge in a particular state because of personal criminal responsibility that could be faced there.

The Association wishes to repeat this position in the context of the CMI's work on Fair Treatment of Seafarers. In addition to the concerns that arise in the narrow context of places of refuge, the criminalization of seafarers is a serious disincentive to recruiting qualified personnel to this important profession. The draft resolution *Guidelines on the fair treatment of seafarers in the event of a maritime accident*, recently developed by the Joint IMO/ILO ad Hoc Expert Working Group on the Fair Treatment of Seafarers in the Event of a Maritime Accident, set out the appropriate principles and approach to the issue.

The Association has also expressed its opposition to the proposed adoption of Bill C-15, in the context of Parliament's consideration of that Bill. The amendments contemplated by Bill C-15 would only increase the exposure of seafarers to prosecution. Among the Association's concerns are compliance with Canada's international obligations, Canada having recently become a state party to the United Nations Convention on the Law of the Sea. This Convention provides that monetary penalties only are to be applied in the event of a pollution incident outside the territorial sea, unless there is a wilful and serious act, and provides for prompt release and security, of which provisions the Association is concerned Canada may be in breach if it proceeds to adopt Bill C-15.

Chile

No further comments.

Croatia

We have no additional comments or suggestions.

Dominican Republic

No.

France

The French law (July 5th 1983 modified in 2004) is extremely severe for any breach to MARPOL Convention :

– In case of pollution in territorial waters the punishment may be up to 10 years imprisonment with a fine up to 1.000.000 euros for all Masters (foreign or French).

– In case of MARPOL CONVENTION breach in "Z.E.E." only French Captains may be punished of prison but foreign Masters can only be punished of fines, usually paid by the owner.

However, until now Masters have never been sentenced to firm imprisonment but only were given suspended sentences. The amount of the fine has never been higher than 600.000 €.

The Master of ERIKA has been detained during 15 days before judgment for pollution in the "Z.E.E". This was in contradiction with French law and Montegobay Convention.

Germany

Greece

Hong Kong

Note:

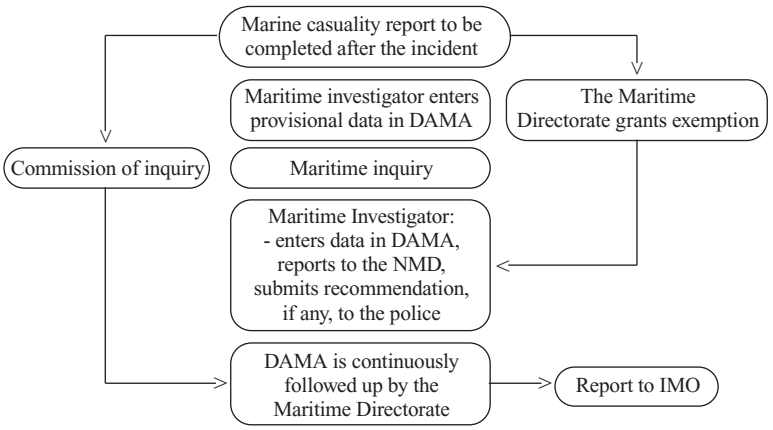
The relevant sections of the Hong Kong Laws mentioned in the answers above are available in the Bilingual Laws Information System of the Government of the Hong Kong Special Administrative Region of the People's Republic of China at http://www.legislation.gov.hk/index.htm.

Italy

No.

Norway

MARINE CASUALITY FLOW-CHART



South Africa

Your covering letter suggests that seafarers in certain countries are detained under the pretext that are being charged or detained for administrative reasons. In theory, the former could occur in South Africa as seafarers can only be detained in South Africa if they are charged with a crime and arrested. The MLA is however confident that this situation would not arise in South Africa. The South African Judiciary is independent, seafarers' rights, as with citizens' rights are protected by the constitution and those constitutional rights have consistently been upheld against government departments.

The P&I Clubs' correspondents in South Africa have advised that in the last 20 years, SAMSA have threatened to arrest ships' Masters involved in pollution incidents but to their knowledge, have never carried out that threat. This is on the basis that SAMSA will accept security from P&I Clubs that are members of the International Group for admission of guilt fines in respect of pollution incidents or as security for cleanup costs. Generally the Club pays the fine following submissions by the owner's and/or Club's lawyers to SAMSA.

The Master of one vessel was arrested after he deliberately ran his vessel aground near the port of Richards Bay. She was sinking at the time and the Court accepted that

he did this in order to save the lives of his crew. To our knowledge, this is the only Master who has been arrested in the last 20 years.

This is despite the fact that on average South Africa experiences three or four significant maritime casualties every year. Most of these result in pollution of one form or another. Fortunately, none of the recent casualties have involved oil tankers. Recently a ro-ro / container vessel was abandoned by her crew after a fire broke out. She subsequently ran aground near the mouth of an estuary and lagoon system which has been declared a world heritage site. She was carrying numerous containers of hazardous chemicals and was considered a significant threat to the ecosystem. None of her crew members were arrested or detained and SAMSA merely conducted a preliminary investigation into the cause of the fire and subsequent grounding.

The real test as to whether or not South Africa has joined the general global march towards criminalizing the seafarer will take place if there is a significant oil tanker incident resulting in substantial pollution. The writer's view, which has not been canvassed with the membership of the MLA, is that South Africa's approach to seafarers will remain as set out above.

Sweden

UK

On a number of occasions members of this association have co-operated with professional colleagues in other jurisdictions in efforts to resolve problems resulting from major maritime accidents, including the detention of seafarers involved.

It is beyond the scope of this paper to comment on the facts of individual cases outside the UK, or on the laws which were applied. Mention here is made only of certain common features which may be discerned from these and other cases, and which may be considered relevant in reviewing the subject from an international perspective.

1 Media reporting of maritime casualties, and especially serious oil spills, has often given rise to reasonable concerns of serious prejudice to the legitimate interests of seafarers and others detained and/or prosecuted after such events. It is for consideration whether measures can be taken to make courts and legislators more aware of this fact, and to promote the adoption of safeguards to protect the rights of the individual.

Experience has shown that the causes of serious maritime accidents identified after thorough investigation by appropriate experts are frequently very different from those initially assumed by journalists, politicians and other lay observers. For example –

– In one major oil pollution incident wide publicity was given to statements by high-level politicians that the ship was an example of "rust-buckets" operated by "rascals", but thorough investigations by experts appointed by the flag state authority have revealed no evidence to support these remarks.

– In the last decade at least two major oil spills have occurred as a result of vessels grounding in channels where dredging operations had fallen behind schedule, and where there are concerns that the information supplied to the ship about the state of the channel was incorrect or misleading. In both cases the relevant evidence came to light only after initial hostile media reactions and lengthy detentions of the ship masters involved.

– In at least two other major oil spills since 1990 pilot error has been identified by official investigations as the main or a significant cause of the incident.

An additional cause of prejudice lies in the fact that the reporting of oil spills, including graphic images of oiled birds and similar effects on wildlife, has a well-known capacity to arouse public outrage out of proportion to any culpability on the part of those assumed to be responsible.

2. In some countries courts and legislators have recognised the possible effect of

prejudicial reporting on lay tribunals such as juries, but have been slow to acknowledge any effect on prosecutors or professional judges. Nonetheless, in most parts of the world law officers have some degree of public accountability, and justice may not be seen to be done if the rights of the individual depend on courts making discretionary decisions which are plainly contrary to strong public sentiments. Difficulties may be reduced in relation, for example, to bail applications if discretionary powers are kept to a minimum and release is governed by mandatory rules in all but clearly defined cases.

3. In a number of cases maritime authorities in coastal states have faced allegations that they were wholly or partially responsible for pollution by reason of factors such as the state of a port or its approaches, the training of pilots, or their handling of an initial incident. Cases of this kind have also tended to be notable for relatively severe action against the master or crew. There may be some cause for concern that prosecution of seafarers is more vigorous if shore-side authorities are on the defensive, and that it is therefore desirable for prosecuting authorities to be as independent as possible from other coastal state authorities who may be involved in the incident.

4. In at least two oil spill cases since 2000 seafarers have been detained for periods of several months, notwithstanding that some of those detained were engineers who could not reasonably be held responsible for alleged navigational faults, and it has been plain that their detention was designed to put pressure on the shipowners or their insurers to provide substantial security for extravagant civil claims. In one of these cases domestic legislation was said to support detention of foreign crew pending provision of security. It may be worth emphasising that detention for such reasons is wholly unacceptable to the international community.

5. Finally, as the CMI Working Group will appreciate, UNCLOS includes some highly relevant provisions in this area including, notably, Article 230. For ease of reference this provides:

Article 230

Monetary penalties and the observance of recognized rights of the accused

1. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels beyond the territorial sea.

2. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.

3. In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.

There is concern in the BMLA that in some jurisdictions national laws on this subject do not clearly reflect these restrictions or may not always be applied in full conformity with them. This is therefore suggested as an issue which the Working Group may wish to examine.

Appendix: Domestic Legislation regarding the Protection, Rights and Welfare of Seafarers

Conditions of Work

– **The Merchant Shipping (Hours of Work) (Amendment) Regulations 2004 (No. 1469). S.I. No. 1469 of 2004:** This amends the Merchant Shipping (Hours of Work) Regulations 2002 and extends provisions relating to inspections of ships and rectification of deficiencies to ships not registered in the United Kingdom or other member States of the European Union. Entered into force on 7 July 2004.

– **Merchant Shipping (Hours of Work) Regulations 2002 (S.I. No. 2125 of 2002). S.I. No. 2125 of 2002:** This legislation was made under the Merchant Shipping Act 1995. Requires employers to ensure seafarers have at least the specified minimum hours of rest. Also requires records to be kept of seafarers' daily hours of rest. Prohibits employment on a ship of a person under 16 years of age, and establishes seafarers' entitlement to annual leave. Entered into force on 7 September 2002 (amended by the Merchant Shipping (Hours of Work) (Amendment) Regulations 2004 (No. 1469).

– **Merchant Shipping (Hours of Work) Regulations 1995 (No. 157 of 1995):** Gives effect in part to the Merchant Shipping (Minimum Standards) Convention 1976 (International Labour Organisation Convention No. 147) laid before Parliament on 24 April 1978 and ratified by the United Kingdom and in force internationally, which requires that safety standards regarding hours of work be established. These Regulations place general duties on operators, employers and masters of United Kingdom sea-going merchant ships (excluding fishing vessels and pleasure craft) to ensure that masters and seamen do not work more hours than are safe for the ship. Entered into force: 28 February 1995

Occupational Safety, Health and Welfare

– **Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997 (No. 1320):** Gives effect to the International Convention on Standards of Training, Certification and Watchkeeping (STWC) for Seafarers, as amended on 7 July 1995. Revokes the Merchant Shipping (Certification and Watchkeeping) Regulations 1982, the Merchant Shipping (Safe Manning Document) Regulations 1992 and the Merchant Shipping (Hours of Work) Regulations 1995. Defines the responsibility of owners and others responsible for the operation of ships in relation to the certification and training of seamen working on their ships, the availability of relevant documentation and the provision of instructions on familiarisation of seamen who are newly-appointed to their ships. Entered into force: 20 June 1997

– **Merchant Shipping (Delegation of Type Approval) Regulations 1996 (S.I. No. 147 of 1996):** Enables certain bodies specified in a Merchant Shipping Notice to give type approval of safety equipment and arrangements for ships under regulations having effect as if made under section 85(1)(a) and (b), and under regulations made under the Merchant Shipping (Prevention of Oil Pollution) Order 1983. Entered into force: 1 March

– **Merchant Shipping (Ships' Doctors) Regulations 1995 (S.I. No. 1803 of 1995):** Replaces Merchant Shipping (Ships' Doctors) Regulations 1981 to implement Council Directive 92/29/EEC of 31 March 1992 (O.J. No. L113, 30.04.92, p. 19). UK ships are required to have a doctor on board if carrying 100 or more persons on an international voyage of more than three days, or on a voyage during which it is more than one and a half days' sailing time from a port with adequate medical equipment. Entered into force 1 August 1995

– **Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995 (S.I. No. 1802 of 1995):** Replaces Merchant Shipping (Medical Stores) Regulations 1986 and the Merchant Shipping (Medical Stores)(Fishing Vessels) Regulations 1988. Implements Council Directive 92/29/EEC of 31 March 1992 (O.J. No. L113, 30.04.92 p.19) on the minimum safety and health requirements for improved medical treatment on board vessels, so far as that Directive relates to the carriage of medicines and other medical stores. Entered into force: 1 August 1995

– **Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulations 1994 (S.I. No. 2014 of 1994):** Omits provisions dealing with the reporting of accidents and dangerous occurrences (now provided in the Merchant Shipping (Accident Reporting and Investigation) Regulations 1994. Entered into foce: 26 August 1994

– **Merchant Shipping (Accident Reporting and Investigation) Regulations 1994 (S.I. No. 2013 of 1994):** Replaces the Merchant Shipping (Accident Investigation) Regulations 1989. They include, with amendments, provisions for the reporting and investigation of marine accidents contained in those Regulations and also those in the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulations 1982 and the Fishing Vessels (Reporting of Accidents) Regulations 1985. The latter Regulations are revoked; the former are amended separately by the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulations 1994 to remove those provisions now covered by these Regulations. Entered into force 26 August 1994

– **Merchant Shipping (Life-Saving Appliances for Passenger Ships of Classes III to VI(A)) Regulations 1992 (S.I. No. 2359 of 1992):** Harmonizes the requirements for life-saving appliances for passenger ships of Classes III to VI(A) with those for passenger ships of the Classes included in the Merchant Shipping (Life-Saving Appliances) Regulations 1986 while taking into account the restricted service in which these Classes of passenger ships are engaged. Revokes the Merchant Shipping (Life-Saving Appliances) Regulations 1980. Entered into force 31 October 1992

– **Merchant Shipping (Safe Manning Document) Regulations 1992 (S.I. No. 1564 of 1992):** Gives effect to an amendment of the International Convention for the Safety at Sea 1974 (SOLAS) adopted by the Maritime Safety Committee of the International Maritime Organisation at its 57th Session on 11 April 1989. The amendment concerns the provision of an appropriate safe manning document or equivalent to every ship to which chapter I of the Convention applies. Entered into force 28 July 1992

– **Aviation and Maritime Security Act 1990 (Chapter 31):** Gives effect to the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation and to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.

– **Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1989 (S.I. No. 1798 of 1989):** Section 5 provides for fines and imprisonment for up to two years for contravention of the Regulations and by s.6, a ship shall be liable to be detained in any case where it does not comply with the requirements. Entered into force 19 November 1989

– **Merchant Shipping (Accident Investigation) Regulations 1989 (S.I. No. 1172 of 1989):** Gives effect to section 33 of the Merchant Shipping Act 1988 which relates to the investigations of marine accidents. Entered into force 7 August 1989

– **Merchant Shipping (Safety at Work Regulations) (Non-UK Ships) Regulations 1988 (S.I. No. 2274 of 1988):** Intends to give effect in part to the ILO Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) in relation to the prevention of accidents for seafarers. The Regulations also concern occupational safety and health in dock work. Entered into force 1 January 1989

– **Merchant Shipping (Hatches and Lifting Plant) Regulations 1988 (S.I. No. 1639 of 1988):** Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Entered into force: 1 January 1989

– **Merchant Shipping (Entry into Dangerous Spaces) Regulations 1988 (S.I. No. 1638 of 1988):** Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Entered into force 1 January 1989

– **Merchant Shipping (Guarding of Machinery and Safety of Electrical Equipment) Regulations 1988 (S.I. No. 1636 of 1988):** Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 777). Entered into force 1 January 1989

– **Merchant Shipping (Means of Access) Regulations 1988 (S.I. No. 1637 of 1988):** Replaces and re-enacts with amendments, the Merchant Shipping (Means of Access) Regulations 1981, as amended. Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Entered into force: 1 January 1989

– **Merchant Shipping (Safe Movement on Board Ship) Regulations 1988 (S.I. No. 1641 of 1988):** Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Entered into force: 1 January 1989

– **Merchant Shipping (Medical Stores) (Fishing Vessels) Regulations 1988 (S.I. No. 1547 of 1988):** Supersedes the Merchant Shipping (Medical Stores) (Fishing Vessels) Regulations 1974.

– **Merchant Shipping (Medical Stores) (Amendment) Regulations 1988 (S.I. No. 1116 of 1988):** Minor amendments to the Merchant Shipping (Medical Stores) Regulations 1986.

– **Safety at Sea Act 1986 (Commencement No. 1) Order 1986 (S.I. No. 1759 (C. 61) of 1986)**

– **Safety at Sea Act 1986 (Chapter 23) :** Promotes the safety of fishing and other vessels at sea and the persons in them. In particular, section 7 addresses training in safety matters.

– **The Merchant Shipping (Life-Saving Appliances) Regulations 1986 (S.I. No. 1066 of 1986):** Issued by the Secretary of State for Transport under the Merchant Shipping Act 1979.

– **The Merchant Shipping (Medical Stores) Regulations 1986 (S.I. No. 144 of 1986):** Regulations concerning safety on board ships (except fishing vessels and pleasure craft), providing for an obligation to carry appropriate medical supplies on sea voyages.

– **Merchant Shipping (Protective Clothing and Equipment) Regulations 1985 (S.I. No. 1664 of 1985)**

– **Merchant Shipping (Medical Examination) (Amendment) Regulations 1985 (S.I. No. 512 of 1985):** Amends the 1983 Regulations of the same name in regard to the exemption provision, treatment of equivalent certificates and the review procedure.

– **Merchant Shipping (Cargo Ship Safety Equipment Survey) (Amendment) Regulations 1985 (S.I. No. 211 of 1985):** Amends the Merchant Shipping (Cargo Ship Safety Equipment Survey) Regulations 1981 to give effect in part to the Amendments to the International Convention for the Safety of Life at Sea.

– **Merchant Shipping (Health and Safety: General Duties) Regulations 1984 (S.I. No. 408 of 1984):** Gives effect in part to convention 147. Require employer, inter alia, to ensure health and safety on board ship; to make provision for maintenance of vessel and occupation and safe use, handling, storage and transport of articles used and for a safe environment; employees are required to take reasonable care of the health and safety of themselves and of other persons on board ship and cooperate with employer in applying Merchant Shipping Act.

– **Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975 (S.I. No. 2220 of 1975)**

– **Merchant Shipping (Medical Scales) Regulations 1974 (S.I. No. 1193 of 1974):** Medicines and other medical stores to be carried in ships.

Social Security

– **Social Security (Contributions) Amendment (No. 2) Regulations 1988 (S.I. No. 674 of 1988):** Inter alia, changes method of calculating contributions for seafarers.

– **Merchant Shipping (Maintenance of Seamen's Dependants) (Amendment) Regulations 1988 (S.I. No. 479 of 1988):** Amends the 1972 Regulations of the same name in relation to deductions from wages to cover social security benefits.

– **Statutory Sick Pay (Mariners, Airmen and Persons Abroad) Regulations 1982 (S.I. No. 1349 of 1982)**

– **Social Security (Industrial Injuries) (Mariners' Benefits) Regulations 1975 (S.I. No. 470 of 1975)**: Modifies and amplifies the general provisions on the subject contained in the social Security Act 1975.

Uruguay

At this moment, we do not have any further comments, but please do not hesitate to contact us in case of any doubts or questions.

USA

The promotion of uniformity and the facilitation of justice in maritime law are among the reasons for the existence of the MLA.. The uneven application of law with respect to seafarers involved in environmental incidents continues to be of serious concern to all the interests involved in the association. However, the uneven application of Justice for seafarers can now be observed internationally. Worldwide uniformity (while a lofty goal) on environmental law would promote cleaner seas and well-run ships.

We should also draw attention to the seafarer's right to confer with the diplomatic corps of their home country or flag state of the vessel. It was it seems that this right is seldom exercised and that more can be done through diplomatic channels to protect seafarers when they are exposed to the onerous penalties which they are increasingly facing worldwide.

Grateful thanks to Matt Hebden of Microsoft for his assistance and patience.
CMI Summary Final Version Rev 2 24/1/ 2006

A MARINE INSURANCE PERSPECTIVE

BY KIM JEFFERIES[*1]

The Fair Treatment of Seafarers or, as stated negatively, the "criminalization of seafarers" is a topic of high priority but what do we really mean? In my view, we are really talking about two related but separate phenomena. The first and probably most common is the increasing trend to treat maritime accidents as crimes, particularly in cases involving significant pollution. The second trend is the unfair treatment of mostly foreign seafarers both in cases involving accidental harm as well as cases that may involve intentional conduct. Some in the maritime industry would limit the discussion of fair treatment to instances of marine accidents. It is my personal view that we must also consider the treatment of those seamen who are accused of intentional criminal conduct. Let's consider these two trends separately.

When is an accident a crime?

Traditionally, at least in common-law systems, there has been a dividing line between civil negligence and criminal acts and consequences. Negligence is nothing more than the failure to use such care as a reasonable and prudent person would use under the circumstances. Thus, when operating in conditions where even a minor lapse could cause great harm, such as operating a ship, the "reasonable care" required increases. But the consequence of a lapse or mistake remains the same, that is, compensation to the victim. After all, part of living in society is to compensate those whom you have unintentionally harmed by your actions and the actions of those you direct.

On the other hand, a society needs to protect its members by punishing those who intentionally harm others and this is where the criminal law comes in. Historically, the dividing line between the civil and criminal law has been "mens rea," literally "guilty mind," meaning that deliberate acts intended to cause harm are considered to be criminal. The aim of the criminal law is to punish the wrongdoer and to deter others, leaving to the civil law the compensation of the victim. Of course this is a simplification in that certain crimes such as negligent homicide do not require specific intent. It is enough that the perpetrator has deliberately acted with gross negligence or recklessly

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[*] Senior Claims Executive and Legal Advisor Gard AS.

[1] This presentation is based upon a lecture to Gard members given by the author in June 2005 and is not intended to represent the views of the International Group of P & I Clubs.

with knowledge that his action could lead to harm – the drunken driver who inadvertently kills a pedestrian, for example, would be guilty of negligent homicide.

MARPOL and the Civil Liability Conventions, the current international regime for prevention of and compensation for ship source pollution, recognize this distinction between accidents and intentional acts. MARPOL provides that there is to be no criminal liability for pollution resulting from a ship casualty "except if the owner or master acted either with intent to cause damage or recklessly with knowledge that damage would probably result."[2] Similarly, the Civil Liability Convention provides, on a strict liability basis, for compensation to victims and limits the consequences of the crew actions to civil fines imposed on the registered owner unless "the damage resulted from their personal act or omission committed with the intent to cause such damage and with knowledge that such damage would probably result." [3]

The sensible approach of the CLC in trading strict liability and mandatory insurance for reasonable and insurable limits of liability is currently under attack and has been supplemented by new criminal provisions in Europe and other countries. This is the trend toward criminalization we shall now address.

The Civil Liability Convention is considered just that —*civil*—leaving signatory states, not to mention the European Union, free to create new criminal penalties for acts leading to pollution. Following the ERIKA and PRESTIGE casualties, the European Council pushed to deter "substandard shipping" by proposing criminal penalties in the aftermath of a spill. Specifically, the EU Council found the current international regime insufficient to deter substandard practices and that "dissuasive effects can only be achieved through the introduction of sanctions applying to any person who causes or contributes to marine pollution". This means not only the shipowner or master but also the owner of the cargo, the classification society or "any other person involved".

The EU directive and framework decision which were adopted in July of 2005 require member states to punish under the criminal law intentional and seriously negligent ship-source pollution with maximum jail terms of three years, fines, and even the wind-up of companies. In cases of serious harm to the environment the jail term is increased to a maximum of five years.

Measured criminal punishment of those who deliberately pollute, including dumping of oily wastes, is appropriate. It is the criminalization of negligence that the industry has condemned. As stated by the International Chamber of Shipping and International Shipping Federation:

> "*The industry is not opposed to appropriate punishment of deliberate violations of environmental rules, but the principle of criminalizing accidents is neither just nor reasonable given the hazards of the sea*"[4]

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[2] MARPOL Annex I, Reg 11(b).

[3] CLC 92 Protocol Article 4. Similarly UNCLOS provides only for monetary penalties for accidental pollution UNCLOS '82 Art 230.

[4] Mariscene Issue 31, Winter 2005 (The Newsletter published by ICS and ISF).

True, the EU directive requires a finding of "serious" negligence, but history has demonstrated the purely subjective nature of such terms when actions including mere omissions are viewed in hindsight and in the context of widespread and well publicized environmental harm. The industry's justifiable concern is that when applying the new and untested legal standard of "serious negligence" the European courts will be tempted to label an act or default as serious just because the effects of the act resulted in "serious" pollution damage. The MARPOL standard of "recklessness" was rejected with respect to spills in territorial waters.[5] Perhaps a more surprising departure from the historical roots of criminal law are the so called "strict liability" provisions found in both the Canadian and American versions of the Migratory Birds Act. The victim here is not human but, as the name implies, migratory sea birds, the harming of which from a pollution incident can trigger criminal liability without evidence of individual intent or even negligence. The concept of strict criminal liability turns the historical distinction between civil and criminal law on its head. When societies consider pollution to be so damaging as to criminally punish those who are guilty without fault, then perhaps it is high time for societies to consider alternative solutions, for example, reducing our dependence on petroleum.

So, when is an accident a crime? The answer, in the context of an oil spill, seems to be whenever an accident leads to serious environmental consequences. Unfortunately, it is the seafarers who will always be in the front line and will no doubt bear the brunt of the application of criminal sanctions in the aftermath of major casualties. Mark Twain once wrote that "sailing is like being in jail, but with the added opportunity of drowning." Despite this pessimistic view, the shipping industry historically could attract highly qualified and motivated individuals who would enter sea service despite the inherent risks and hardships of life at sea. Will that continue to be so given the additional risks and deprivations of liberty that may follow from criminal investigations and sanctions following a marine accident?

Why should we care about criminal prosecutions of seafarers for intentional discharges?

The second problem frequently discussed under the rubric of unfair treatment of seafarers is the government's treatment of seafarers as targets or witnesses in the investigative process with respect to suspected intentional violations. As already mentioned, the criminal law is an appropriate response to deliberate dumping of oil. Indeed, the dichotomy between accidental and the intentional acts is reflected in the insurance cover provided by the International Group of P & I Clubs for pollution fines. The International Group adopted a common rule applicable since policy year 2000 that only covers fines and related defense costs arising from accidental discharges. All Clubs agree that

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[5] Intertanko leads an industry challenge to the EU directive filed in the London High Court on 24 January 2006 seeking ultimately a ruling from the European Court of Justice that the directive conflicts with international law, namely MARPOL and UNCLOS.

deliberate violation of MARPOL by discharging oily waste water is not an "accidental discharge".

That said, Clubs in the International Group may consider payment of fines on a discretionary basis. But in such cases, the Members are required to satisfy the Directors or Executive Committee of the particular Club that they took such steps as appear to have been reasonable to avoid the offence. The Clubs require the member to proactively monitor the waste management practices aboard their vessels and do not cover any fines or other penalties imposed where the owner knew or ought to have known of the offence, and failed to take reasonable measures to prevent it.[6]

It should also be noted that from a P & I perspective, the liability covered is that of the ship owner or operator rather than individuals. Yet as mutuals, Clubs are naturally interested in the welfare of their members including the seamen who man the ships, not to mention the loss prevention benefits to the insurance industry as a whole of highly competent crews.

Speaking personally, the problem is not that the criminal law is applied to seafarers who deliberately pollute; the problem is the unfair way in which the law is applied. That many crewmen have been caught bypassing or disabling the oily water separator in clear violation of the MARPOL requirements is an embarrassment to the industry. Yet, the treatment of crewmen, both the innocent and the guilty ones, has to be of concern not just to the industry but to all who hold dear the civil rights of the individual when faced with the crushing power of a government investigation.

One focus of industry frustration is with the criminal proceedings for MARPOL related violations in the United States. The United States Coast Guard is the port state authority that has the right and responsibility to inspect ships to assure compliance with MARPOL regulations. In this role, the ship personnel have the corresponding responsibility to cooperate in an open and transparent manner with the common goal of compliance and correction of any deficiencies found. When deficiencies are found, the Coast Guard also has the opportunity to impose a civil fine for MARPOL violations including illegal discharges within US waters. The range for this administrative fine against the ship operator is between 6,200 and 32,500 U.S. dollars. The Coast Guard does not itself have authority to impose criminal fines or jail terms.

The Coast Guard, however, simultaneously acts as the investigative arm of the United States Justice Department, the federal agency responsible for prosecuting criminals. In this role, the Coast Guard's relationship with crew is clearly adversarial. In the context of a criminal investigation, a foreign crewman has the same rights as a United States citizen, including the right against self-incrimination and the right to the assistance of counsel. Unfortunately for the hapless Filipino, Latvian, Russian, Chinese or other foreign engineer, it is not always possible to tell when the Coast Guard has changed hats and is now

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[6] In 2005 all IG Clubs issued a circular to their members stating a common position with respect to fines for intentional violations of MARPOL. See for example Circular No. 3/2005 available in the publications section of the Gard website www.gard.no.

looking for evidence that may land the crewman in prison. Even worse, a wrong answer may result in prosecution for obstruction of an agency proceeding, a serious crime in itself, and one that does not require any wrongdoing with respect to the MARPOL violations that are the subject of the investigation. When the Justice Department decides to prosecute, the penalties available include a fine against the individual crewman of up to 250,000 dollars and five years in jail. The fines against the company, as employer, can be as high as 1 million dollars per count. It is multiple counts that produce the staggering figures we have all been reading about in the maritime press.

The U.S. Coast Guard's dual role as both civil inspector and criminal investigator is unfortunate in that the criminal investigatory role may negatively impact the close cooperation that the Coast Guard has historically shared with the international shipping community. It does not have to be this way. Norway for example has provided for an Investigatory Commission to investigate major accidents and pollution events both in Norwegian waters and with respect to Norwegian Flag vessels. This agency will not contemplate civil or criminal charges relating to the casualty. Criminal prosecutions will be dealt with separately within the existing criminal justice system. While crew will have a duty to provide information to the Investigatory Commission the information provided by individuals cannot be used in a subsequent criminal proceeding. In this way, the Commission has the best opportunity to determine the true cause of an incident in order to best insure that it does not recur. Interestingly, this Norwegian law is new, coming into force this year. This same system is already in place in the United Kingdom.

Foreign crewmen are often detained in U.S. ports as "material witnesses" during a Department of Justice investigation of suspected MARPOL violations. They are not initially charged with a crime although they may be so charged based on the evidence they or their fellow crewmembers produce. Because material witnesses subject to a flight risk can be jailed without trial and without bail, shipowners will often agree to provide hotel accommodations and pay for a security guard to stand watch. But this undertaking by the shipowner and cooperation by the crewman are in no sense voluntary. Detention in a foreign land in a hotel room with a guard at the door may not be as bad as a prison cell but it is still a deprivation of personal liberty.

Crewmen are not advised of their right to counsel or right to remain silent. The Master or the shore-side employer has to be careful in how they inform the crew of these rights because a communication that can be construed as an order "not to talk" may be considered obstruction or witness tampering, serious felony crimes. It is not only the guilty who require assistance from a lawyer. Even innocent crewmembers struggle not only with the English language, but with the fear engendered by being intensely questioned by gun-carrying federal agents. Fear does not necessarily arise from wrongdoing. It can just as easily be the fear of a single individual in a foreign land facing the awesome power of the United States government.

We have to ask ourselves whether the end justifies the means when it comes to punishing and deterring the violation of MARPOL through criminal sanctions. In my personal view the answer has to be no. We as civilized human

beings have to respect the rights of even intentional violators when faced with deprivation of liberty. These are rights of the individual seaman not because he serves aboard a ship but because he is a human being.

Conclusion

Clearly, the trend toward criminalization of marine pollution will continue. With respect to marine accidents we as an industry must continue to combat this trend. While great strides can be made in reducing pollution incidents, accidents will continue to occur. The way forward is to strengthen the current systems to identify and eliminate "substandard" ships. On the insurance side, we must support the changes to the civil regimes to ensure quick and adequate compensation in the event of a catastrophic spill. Nothing fuels a political response more than inadequate compensation to victims. The International Group of P & I Clubs, including Gard, is committed to this task.

In contrast, the industry should support the sanctions under current regimes for the intentional dumping of oily wastes. Dumping is in clear violation of MARPOL, the international treaty in force nearly worldwide. The clear answer to this problem is to comply with the law including the reporting of violations to the flag state followed by correction and imposition of sanctions as appropriate. The United States authorities have concluded that flag states are not up to the task and will continue to prosecute within the United States justice system those caught in a practice of dumping oil in international waters and falsifying the Oil Record Book to mask the practice. Experience has shown that both the guilty and the innocent are caught up in criminal investigations in the United States, often with great harm done before a decision is made whether there is evidence of intent and therefore criminal versus civil jurisdiction. While condemning the practice of dumping, we as an industry should nonetheless support the initiatives to provide guidelines as to the fair treatment of seafarers who are detained against their will and subjected to possible prison sentences. The rights of all are best protected by respecting the rights of those accused or suspected of crimes. This has been a fundamental principal embodied in the United States Constitution and one that is reflected in the Universal Declaration of Rights adopted by the General Assembly of the United Nations more than fifty years ago.

CRIMINALISATION AND UNFAIR TREATMENT: THE SEAFARER'S PERSPECTIVE

BY PROSHANTO K. MUKHERJEE*

Introduction

Since the dawn of civilisation humankind has been constantly drawn to the sea. Our primeval ancestors, though creatures of *terra firma*, discovered the phenomenon of flotation and learned to transport goods and persons by water. Shipbuilding and seafaring flourished in the ancient civilisations of the eastern hemisphere and the Mediterranean basin, and since those antiquated times, seaborne trade has remained the lifeline of land-based society to this day. The seafarer is an artisan of ancient vintage but ironically his lot has often been an unhappy one. In this new millennium, people whose lifestyles generate the pollution that is threatening the future of the planet abhor the very seafarers who bring them oil to fuel their gas guzzling vehicles and heat their homes.

Nowadays, the master whose tanker runs aground in *force majeure* circumstances and spills oil is frequently prejudged as a criminal. The seafarer of suspect nationality and a strange name is denied leave to step ashore or communicate with his/her family after months of isolation at sea because such creatures are security risks. Whatever the law might be, the *de facto* state of affairs is that the common seafarer is often not even accorded basic fair treatment let alone equality before the law, due process, fundamental human rights or other mouthfuls of legal doctrines that are the hallmarks of civilised society. Hopefully, the tide will change and the global beneficiaries of shipping will influence the seafarer's lot in a positive way.

Criminality and Criminalisation

Criminalisation in reference to a person means turning someone into a criminal by making his activity illegal.[1] Thus, a person is criminalised if his conduct or act is criminal. Although the words "crime" and "offence" are often used interchangeably, there is a distinction between a criminal offence and an

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[1] See Judy Pearsall (ed.), *The New Oxford Dictionary of English*, Oxford: Oxford University Press, 1998 at p. 2001.

offence that does not bear the hallmarks of criminality in the true sense but are rather described as regulatory or public welfare offences.[2] The former requires proof of *mens rea* whereas the latter does not. The typical *mens rea* offences are relatively serious. These are offences where some element of wrongful intent or other fault is required to be proven. The general principle is based on the maxim *actus non facit reum nisi mens sit rea* meaning essentially that only a guilty mind makes an act criminal.[3]

The observation is clearly pertinent in the context of seafarers being criminalized in connection with accidental oil spills. In contrast with *mens rea* offences, offences characterised as strict liability or "halfway-house" only require proof of the *actus reus*. The so-called "halfway-house" offence is one where no *mens rea* need be proven but the accused is afforded the defence of due diligence to exonerate himself. The onus shifts to the defendant who must prove due diligence on a balance of probabilities. In a typical strict liability offence no such defence is available. The accused is guilty once the *actus reus* is proven.[4]

Often it is the penal prescription in legislation that provides a clue as to whether an offence is or should be viewed as one or the other type of offence. Usually, pollution and safety-related offences belong to the latter category. In the maritime field these are typically violations under the SOLAS[5] or MARPOL[6] Conventions which have been transformed into offences in national legislation.[7]

Marine Pollution Offences: The International Dimension

The doctrine of *mens rea* has its roots in legal systems of great antiquity and is universally recognised. It is ironic, therefore, that the requirement of proof of *mens rea* in a criminal offence which is a basic tenet of criminal law, has escaped responsible legal minds in regimes where seafarers have been, and continue to be criminalised in cases of accidental pollution. Instead today, it is a blame culture that seems to flourish.[8]

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[2] See Glanville Williams, Textbook of Criminal Law, 2nd ed., London: Stevens & Sons, 1983 at pp. 322 and 936-937. For the American perspective see Sayres, "Public Welfare Offences" (1933) 33 *Columbia L. Rev*. 55 and John C. Coffee Jr., "Does 'Unlawful' Mean 'Criminal'?: Reflections on the Disappearing Tort/Crime Distinction in American Law" (1991) 71 *B.U.L. Rev*. 193 at p. 199.

[3] See Williams, *supra*, note 2 at fn. 1 at p.70.

[4] The Supreme Court of Canada's decision in *R*. v. *City of Sault Saint Marie* (1978), 40 C.C.C. (2d) 353 (S.C.C.) contains a detailed discussion of these types of regulatory offences.

[5] International Convention for the Safety of Life at Sea, 1974, 1 November 1974, 164 U.N.T.S. 113.

[6] International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, 17 February 1978, A.T.S. 1988 No. 29.

[7] See *e.g.* penal provisions in U.K. maritime legislation such as *Merchant Shipping Act 1995* (U.K.), 1995, c. 21, ss.131and 132. See also *Merchant Shipping (Prevention of Oil Pollution) Regulations*, 1996, S.I. 1996/2154, reg. 36.

[8] See Birgitta Hed, "Criminalisation of Seafarers" in The Swedish Club Letter, No.1, 2005, May at p. 12.

Nobody would argue that a violation of a typical MARPOL discharge requirement should go unpunished. Nonetheless, the punishment should fit the offence. If the offence is simply regulatory, *i.e.* one that is characterised as a strict liability or halfway house offence, then the sanction should be commensurate with that characterisation. As indicated above, the treatment of a typical MARPOL offence as a halfway house offence, affording the accused the defence of due diligence, is functional and meaningful because it justifies a higher penal sanction than a strict liability offence. Even so, if a seafarer deliberately bypasses an oily water separator or knowingly enters false information in the oil record book, there is no reason why such an act should not be punished as a criminal offence, albeit accompanied by a sanction commensurate with the offence. But a clear distinction needs to be made between acts that inherently contain a mental element and those that are purely accidental.[9] The latter are clearly "not criminal in any real sense"[10] but are a species of *malum prohibitum* or technical offence which attract liability without the need to prove *mens rea*.[11]

Prima facie a state enjoys its sovereign prerogative to enact a law that criminalises the act of an accidental oil spill, and criminalises the seafarer who allegedly caused the oil spill. But if that state is a party to the United Nations Convention on the Law of the Sea, 1982[12] (UNCLOS) or MARPOL, any national law that is in conflict with those conventions is invalid, and national courts should so hold. If it were otherwise, it would constitute a failure of the state to carry out its treaty obligations. Indeed, this is one of the central bases upon which INTERTANKO and others have applied to the Administrative Court of the High Court of Justice in England for judicial review of EU Directive 2005/35/EC on Ship-Source Pollution.[13] It is alleged, *inter alia*, that EU legislation cannot validly put member states in breach of their international legal obligations.[14]

Regulation 11(b) of MARPOL Annex I provides that Regulation 9 setting out various prohibitions and controls on the discharge of oil and Regulation 10 regarding methods for the prevention of oil pollution from ships in special areas shall not apply to:

The discharge into the sea of oil or oily mixture resulting from damage to a ship or its equipment:

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[9] See *ibid*.

[10] Williams *supra*, note 2 at p. 936.

[11] Lord Reid exemplified this idea in *Sweet* v. *Parsley* [1970] A.C. at p. 839.

[12] United Nations Convention on the Law of the Sea, 10 December 1982, 1833 U.N.T.S. 396.

[13] See Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on Ship-Source Pollution and on the Introduction of Penalties for Infringements, [2005] O.J. L 255/11 <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri = OJ:L:2005:255:0011:0021:EN:PDF> (4 November 2005) and INTERTANKO, "Background Information and Briefing Note – INTERTANKO & Others v. The Secretary of State for the Department of Transport" <http://www.intertanko.com/picturearchive/2006012651973295400-SSP.DOC> (2 February 2006).

[14] *Ibid.*

(i)provided that all reasonable precautions have been taken after the occurrence of the damage or discovery of the discharge for the purpose of preventing of preventing or minimizing the discharge; and

(ii)except if the owner or the Master acted with intent to cause the damage, or recklessly and with the knowledge that damage would probably result….

Essentially, Regulation 11(b) provides for a "due diligence" defence in respect of accidental discharges resulting from damage to the ship or its equipment, which defence is unavailable only where it is proven that the owner or the Master acted recklessly or with intent *and* with the knowledge that the damage would probably result. Stated another way, an offence is committed only where there is a failure to take all reasonable precautions to avoid or minimise the damage from the discharge. Where such precautions have been taken, the liability of the owner or Master can only be established by adducing adequate proof of *mens rea*, *i.e*., intent or recklessness coupled with knowledge that damage would probably result.

The relevant provisions in UNCLOS are contained in Article 230 under the caption "Monetary penalties and the observance of recognized rights of the accused". The article reads as follows:

1. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels beyond the territorial sea.
2. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.
3. In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.

In paragraph 1, which refers to waters "beyond the territorial sea", the coastal state has limited or no sovereignty. Clearly in the high seas it enjoys no right associated with sovereignty even though it has rights of intervention under the Intervention Convention, 1969[15] in cases of grave and imminent danger of its coastline or related interests being subjected to pollution damage. In the exclusive economic zone (EEZ), the coastal state enjoys legislative and enforcement jurisdiction in relation to protection and preservation of the marine environment.[16] But, subject to the provisions of Part V of the Convention, three of the six enumerated freedoms of the high seas set out in

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[15] Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 29 November, 1969, 26 U.S.T. 765, 970 U.N.T.S. 211.

[16] R.R. Churchill & A.V. Lowe, *The Law of the Sea*, Third Edition, Manchester: Juris Publishing, 1999, at p.169

Article 87 remain intact in those waters where only monetary penalties may be imposed pursuant to paragraph 1 of Article 230. Clearly, therefore, any penal provision in national law relating to a spill or discharge of oil by a foreign vessel in those waters cannot be so characterized as to attract a sanction such as incarceration of the accused. In other words, it would be appropriate to treat such an offence as a non-*mens rea* offence such as a strict liability or halfway house offence.

Paragraph 2 in the first instance also calls for monetary penalties only in respect of a foreign vessel polluting the territorial sea of a coastal state. But there is an important exception which applies in the event of a "*wilful* and serious act of pollution".[17] Here, the word "wilful" clearly indicates that the provision contemplates a *mens rea* offence situation. In other words, other than monetary penalties (presumably incarceration) can be imposed if the offence is committed in the territorial sea is so serious as to be characterized as a *mens rea* offence.

Paragraph 3 requires the recognized rights of the accused to be observed in proceedings involving a violation by a foreign vessel. If the accused is a master or other category of seafarer, as is frequently the case, his "recognised rights" would include rights under the law of the forum jurisdiction as well as his fundamental rights under international law.

The CMI Questionnaire and Various Responses

In response to a request to assist in the work of the Joint IMO-ILO Ad Hoc Expert Working Group which commenced deliberations in November 2004, the Comité Maritime International (CMI) established the CMI International Working Group on the Fair Treatment of Seafarers (CMI-IWGFTS). The CMI Working Group has circulated to 52 member states, a questionnaire covering the administrative and criminal actions that may be taken in the aftermath of a maritime accident. The questionnaire consists of 14 questions the first 9 of which have been identified as "essential". These responses have been carefully summarised by David Hebden, member of the CMI-IWGFTS and its incoming Chairman.

Nevertheless, some of the most pertinent responses relate to question 10 which asks whether, in the circumstances of a maritime accident involving a foreign-flag vessel which results in serious pollution and which is due to negligence but not wilful misconduct, the State will proceed only with pollution damage claims under the accepted international civil liability and compensation system. What becomes clear when the various responses are reviewed is that the strictures of Article 230 of UNCLOS are often ignored. For example, the responses given by Australia, Canada, France, the United Kingdom and the United States indicate that seafarers may be subject to criminal liability and penal prosecution in respect of pollution incidents in the territorial sea even in circumstances where the pollution is attributable to negligence and there is no

[17] Emphasis added.

proof of wilful behaviour.

In the United States a seafarer can be found liable for negligent acts resulting in oil pollution under both the *Clean Water Act*[18] and the *Oil Pollution Act*[19] of 1990. Moreover, a seafarer can face penal sanctions without proof of either negligence or intent under the no-fault criminal provisions of the *Refuse Act*[20] and the *Migratory Bird Act*.[21] Similarly, under Canadian marine pollution law the fact that a pollution incident may be attributable to negligence rather than wilful misconduct does not necessarily mean that a seafarer will escape criminal liability. In this respect, there appears to be some inconsistency in Canadian practice with the *Canada Shipping Act*[22] primarily providing for strict liability pollution-related offences with a due diligence defence generally resulting in charges against the vessel involved, while recent amendments to the *Migratory Birds Convention Act*[23] and the *Canadian Environmental Protection Act, 1999*[24] expressly contemplate prosecution of a Master or Chief Engineer for failing to take reasonable steps to prevent pollution incidents. In other words, a seafarer may face penal sanctions under the legislation without proof of intent. In contrast, responses from Chile, Germany and South Africa indicate that a seafarer involved in a similar pollution incident would not face the possibility of incarceration.

As to whether a similar pollution occurring in the EEZ would change matters, it would seem that Article 230 of UNCLOS has been similarly disregarded by a number of states. In other words, a number of states do not restrict themselves to the imposition of monetary penalties in respect of violations of marine environmental laws in areas beyond their territorial seas. Australia, for instance, makes no distinction between the approach taken in its territorial sea and that adopted in its EEZ. Similarly, Canada's recent amendment of the *Migratory Birds Convention Act* provides for penal sanctions that may be applied to seafarers in respect of pollution-related offences in the Canadian Exclusive Economic Zone. Nonetheless, some states appear to heed Article 230 by limiting themselves to the imposition of monetary penalties in the Exclusive Economic Zone. In the United States, for instance, in order to invoke criminal statutes the criminal act must have occurred within the 12 nm territorial sea.[25]

Seafarers as Scapegoats

There is no question that a sovereign state is free to criminalise an act or an individual within the bounds of its international law obligations as discussed above, if the matter is of international concern and character. However, the

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18 33 U.S.C. § 1251 et seq.
19 33 U.S.C. §§ 2701-2728 (2000).
20 33 U.S.C. § 407 (2000), 33 U.S.C. § 411 (2000)..
21 16 U.S.C. §§ 701-718j (1988 & Supp. II 1990).
22 R.S.C. 1985, c. S-9.
23 S.C. 1994, c. 22.
24 S.C. 1999, c. 33.
25 There appear to be some exceptions to this general rule with respect to violent crimes.

criminalisation of seafarers as scapegoats is manifestly unfair and deplorable. In the view of one commentator, imposition of criminal liability against seafarers has been an exercise for raising revenue or strictly politically motivated.[26] The *Tasman Spirit* and *Prestige* cases are prime examples of seafarers being treated as scapegoats for dubious owners with deficient ships.[27]

Unless there is evidence of criminal negligence on the part of the seafarer concerned, which would have to be substantiated by wilfulness as the requisite *mens rea* element, an accident is by its very nature a fortuitous incident. But the easy way out for the prosecutors and courts is to scapegoat the seafarer. It bears well with the political masters, and politicians readily support criminalising foreign seafarers to appease their land-based constituencies on whose votes depend their political fortunes.

Not only are certain States unilaterally and blatantly violating the international law [28] for reasons associated with domestic politics, but this atrocious state of affairs is being institutionally endorsed. The European Union Directive on criminal sanctions for ship source pollution is a case in point.[29] According to the proposed amendments to the Directive, ship-source discharges of polluting substances should be regarded as infringements if committed with intent, recklessly *or* by serious negligence.

The infringements under the EU Directive are regarded as criminal offences by, and in, the circumstances provided for in, Council Framework Decision 2005/667/ JHA, which supplements the Directive.[30]In early March, the European Parliament overwhelmingly approved an amended draft of the Directive which criminalises seafarers in the event of accidental pollution.[31]

The EU provision is contrary to Article 230, paragraph 2 of UNCLOS under which, the serious act must be in addition to it being wilful (synonymous with "intentional"). Clearly, the UNCLOS provision does not contemplate the act to be *either,* wilful *or* serious, but rather both wilful *and* serious. The UNCLOS provision is cast in the conjunctive mode whereas the EU provision is disjunctive. If the same EU provision is compared with Regulation 11(b) (ii) of Annex I to MARPOL, again there is an anomaly. The expression "recklessly

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[26] Statement attributed to Birgitta Hed of the Swedish P&I Club by James Brewer, "Scapegoating is 'backward step' for safety", *Lloyd's List,* 16 January, 2005 at p. 9

[27] D. Fitzpatrick and M. Anderson (Ed.), *Seafarer's Rights*, Oxford: Oxford University Press, 2005 at p. 35.

[28] Edgar Gold, "The Fair Treatment of Seafarers", *WMU Journal of Maritime Affairs* 2005, Vol.4, No.2, 129 at p.130.

[29] *Supra*, note 13. The European Commission itself has stated that the Directive was driven "not by sound rational thought but by political sentiment and expediency". See Sandra Speares, "Continuous fire at directive on criminal sanction for polluters", *Lloyd's List*, 7 October 2005 at p. 6.

[30] Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution, [2005] O.J. L. 255/164 <http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/l_255/l_25520050930-en01640167.pdf> (4 November 2005).

[31] Richard Meade, "Legal Challenge Floated on EU Criminalisation" *Fairplay*, 3 March 2005 at p. 6.

and with knowledge" in the MARPOL provision is conjunctive in scope, which means recklessness must be accompanied by knowledge to constitute a violation under the Convention. By contrast, the expression "recklessly *or* by serious negligence" in the EU Directive is cast disjunctively. In other words, an infringement is a criminal offence if the conduct of the alleged perpetrator constitutes either recklessness *or* serious negligence. *Prima facie* it is contrary to MARPOL which requires both recklessness and knowledge as constituent elements of the violation. At any rate, "knowledge" is not equivalent to "serious negligence"; but apart from that, there is serious doubt as to whether there is any such thing as "serious negligence" known to the law. Even if one were to put it down to sloppy drafting, surely those who promulgated this important piece of EU legislation must have realised the serious legal implications of such sloppiness.

The Directive provides for a regime that is geographically wider in scope than MARPOL and will be applicable (if it ever does) on the high seas as well contrary to international law which vests jurisdiction solely in the flag state.[32] Regarding this, Professor Edgar Gold, outgoing Chairman of the CMI-IWGFTS has this to say:

> International law is quite clear on what criminal action may and may not be taken against seafarers as a result of a maritime accident on the high seas. The jurisdiction for such criminal action is solely reserved to the flag state and the state of nationality of the persons concerned. Furthermore, within coastal state jurisdiction, states are not permitted to imprison anyone for polluting the marine environment except in cases of wilful and serious negligence. In other words, states are acting in contravention of widely accepted international law in taking this action against seafarers. Although such action is often taken out of frustration as flag states fail to undertake the required action, the use of criminal sanctions is clearly illegal.[33]

Dr. Thomas Mensah, recently retired judge of the International Tribunal on the Law of the Sea (ITLOS) and the Tribunal's first President recently remarked that an EU state giving effect to the Directive "would be in breach of its obligations to another state party to MARPOL if it seeks to apply sanctions to the vessel of that other state for a discharge that results solely from serious negligence".[34] In other words, a discharge can only be considered a criminal offence if the requisite *mens rea* of "intent" is proven. The Chairman of the Greek Shipping Co-operation Committee, Epaminondas Embiricos has called for the abolition of this EU Directive saying that it "places EU member states in breach of their MARPOL treaty obligations and is contrary to international law".[35]

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[32] UNCLOS, Article 7.

[33] Gold, *supra*, note 28 at pp. 129-130.

[34] See Sandra Speares, "EU criminalisation rules rapped by Law of Sea judge", *Lloyd's List*, 6 October 2005 at p. 2. This write-up is a report on the Cadwallader memorial lecture at the London Shipping Law Centre.

[35] *Ibid.*

Fundamental Rights

Flowing from the above is the issue of unequal treatment of foreign seafarers under the national or international law in terms of due process. This is where the issue of fundamental rights comes into play. The treatment of seafarers in terms of deprivation of basic human rights is perhaps the most significant aspect of the issue under discussion.[36] They are frequently treated as serious criminals before their guilt has been established. Even the European Parliament expressed the view that member states should be prevented from using the so-called "Criminalisation Directive" to carry out a "witch hunt" against seafarers.[37]

In liberal democratic political systems, fundamental human rights are entrenched in the constitution, whether it is written or unwritten. In civilised society, virtually all states claim that these rights are protected by their respective legal and political systems [38]. Whether in practice such is the case is another matter. In democracies and other systems alike, perceptions of human rights and their applications in specific instances are not exactly uniform.[39]

The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950,[40] which applies to all countries of the European Union including Spain and France, the principal defaulters in recent times, contains the following in Article 6:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Article 13 provides as follows:

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

This Convention is effectively stronger than the Universal Declaration of Human Rights because it is binding on all member states of the Council of Europe whereas the latter is an instrument *para droit*.[41] But none of the above-

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[36] Birgitta Hed has referred to "many cases in which seafarers have been treated in a manner that violates their human rights." See Brewer, *supra*, note 26 at p. 9.

[37] Meade, *supra*, note 31.

[38] Article 38 paragraph 1(c) of the Statute of the International Court of Justice identifies "the general principles of law recognised by civilised nations" as one of the sources of international law. See Statute of the International Court of Justice, 26 June 1945, 59 Stat. 1031. See also J.G. Starke, *Introduction to International Law,* 10th ed., London: Butterworths, 1989, at p. 33. See also M. Cherif Bassiouni (ed.), *International Criminal Law*, 2nd ed., New York: Transnational Publishers, 1999 at pp. 998-999.

[39] The issue of capital punishment is a case in point.

[40] Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November, 1950, 213 U.N.T.S. 221.

[41] Starke, *supra*, note 38 at pp. 364-365.

noted provisions have given any solace or respite to Captain Mangouras, Captain Mathur and others.[42]

There is little doubt that a state can be held criminally liable, vicariously or otherwise for a violation of a fundamental human right, even though *mens rea* cannot be imputed to a state.[43] Human rights violations are criminalised through the development of penal proscriptions with the object of preventing them.[44] Therefore, where the machinery of state, be it the administrative or judicial arm, violates the fundamental human rights of a seafarer, that state should be subject to criminal sanction in the same manner as repressive states are treated under international law for *jus cogens* crimes against humanity. It is said "crimes that affect social, cultural and economic interests also have a human rights dimension".[45]

The Universal Declaration of Human Rights[46] adopted by the United Nations in 1948 recognises the "inherent dignity and the equal and inalienable rights of all members of the human family… ". It is instructive to note the mention of dignity which seafarers in the current milieu do not seem to be accorded, and also the fundamental notion of equality which is described as "inalienable". On the issue of equality, a relevant observation is the manner in which others in society are treated as compared to seafarers. Are tourist polluters of beaches and industrial polluters of the sea treated with the same degree of harshness as seafarers, particularly in view of the established fact that land-based marine pollution is overwhelmingly higher than ship-source pollution?[47] Are they "thrown in the slammer" without a trial, and is bail set for them at an inordinately high amount that is virtually impossible to meet, as was the case with Captain Mangouras?[48] Society pretends that there is an inherent and inalienable right of all humans to be treated equally, but that is clearly not the case when it comes to seafarers. They continue to be the subject of abuse and exploitation and are treated as nothing but scapegoats.[49]

The Universal Declaration of Human Rights provides in Article 3 that "[e]veryone has the right to life, liberty and security of person". The State, in this context, is enjoined to "take appropriate steps to safeguard the lives of those within its jurisdiction".[50] Thus, port and coastal states owe such an obligation to seafarers of foreign ships.[51]

Article 8 of the Universal Declaration of Human Rights and Article 6 of

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[42] In the case of Captain Dimitrios Karystinos of the *Tasman Spirit*, of course, this Convention was not applicable because Pakistan is not a country of the European Union.

[43] Bassiouni, *supra*, note 38 at p. 248.

[44] *Ibid*. at p. 46, fn. 211.

[45] *Ibid*. at p. 46

[46] Universal Declaration of Human Rights, 10 December 1948, U.N.G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

[47] See Geoffrey Lucas in a letter to the editor of *Lloyd's List*, 14 July 2005 at p. 4.

[48] *Lloyd's List*, 13 July 2005 at p.2.

[49] Michael Grey, *Lloyd's List,* 1 August 2005, at p. 5.

[50] Decision of the European Court of Human Rights in *Osman* v. *United Kingdom* (1998), ECHR Series A, No. 3, para. 11.

[51] Fitzpatrick and Anderson, *supra*, note 27 at p.54.

the European Convention on Human Rights both provide for a right to legal remedy, the procedural element of which includes a right of access to court and right to legal counsel. The right to a fair hearing *within a reasonable time* (emphasis added) by a competent court is another fundamental human right. There were clear violations of this right in the *Prestige* and *Tasman Spirit* cases.[52] All of these rights obviously apply to seafarers and are established rules of customary international law. If there is failure by a state to provide judicial access or an effective legal remedy is not available by reason of technicalities, a state will be deemed to be in violation of international law obligations to provide access to justice. In several cases involving seafarers the right of access to justice has been denied.[53]

Freedom from discrimination on grounds of religion or national or ethnic origin is guaranteed in several international treaty instruments as well as national constitutions.[54] Yet, an IMO member state whose constitution prohibits such discrimination currently demands that the religion of each crewmember of a visiting ship be declared before a ship is given inward port clearance.[55] Shipping companies are denying jobs to muslim seafarers because they are potential security risks. A seafarer with an "Islamic-sounding" name particularly if the middle name is "bin" is of course a potential terrorist, even though the word has the same or effectively similar meaning as "Ben" in Hebrew or "Van" in Dutch or "Von" in German, essentially "son of", "of" or "from".[56] In addition to being discriminatory, this kind of treatment is categorically "degrading" and falls under the prohibition articulated by Article 3 of the Universal Declaration of Human Rights and Article 7 of the European Convention on Human Rights.

As reported by the International Commission on Shipping, "[s]eafarers are considered and treated by some port States more as potential criminals or undesirables rather than respected professionals".[57] These are undoubtedly blatant violations of seafarers' human dignity and repugnant to any kind of civilised societal norms. Are doctors, lawyers, judges and other professionals treated as potential criminals if in the course of their professional activities, a fatal mishap occurs and every attempt by the individual to prevent the occurrence and save the situation fails? The answer must surely lie within the conscience of civilised society. Notably, IMO Secretary General Admiral Mitropoulos in his recent World Maritime Day 2005 speech has admonished the maritime community to treat seafarers with respect and recognise:

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[52] *Ibid.* at p. 35.

[53] See A.D. Couper, C.D. Walsh, B.A. Stanberry and G.L. Börne, *Voyages of Abuse, Seafarers, Human Rights and International Shipping*, London: Pluto Press, 1999 at pp. 106-117 in reference to the *Kyoto 1*.

[54] Fitzpatrick and Anderson, *supra*, note 27 at pp. 56-57.

[55] See IMO Doc. MSC 79/5/8 submitted by ICS, BIMCO, INTERCARGO, INTERTANKO and SIGTTO.

[56] David Osler, "Malaysian seafarers face employment prejudice", *Lloyd's List*, 23 September 2005 at p. 8.

[57] Report of the International Commission on Shipping, "Inquiry into Ship Safety: Ships, Slaves and Competition", 2000 at p. 28.

> those who at the risk of losing their own life, commit acts of extreme bravery to rescue persons in distress at sea or to prevent catastrophic pollution of the environment thus exhibiting virtues of self sacrifice in line with the highest traditions at sea and the humanitarian aspect of shipping.[58]

On another occasion he said:

> The punishing treatment meted out to seafarers, on whom international seatrade and the prosperity of nations depend, not only was disrespectful, wrong, unfair and unjust, but also contrary to international law.[59]

Lord Steyn, in his capacity as Chairman of the Cadwallader Forum 2004 hosted by the London Shipping Law Centre described the incarceration of seafarers as "a monstrous failure of justice". Former IMO Secretary General W.A. O'Neil recently remarked that authorities should be busy providing shore reception facilities instead of roaring around with criminal sanctions against seafarers who are easy targets without a constituency and provide a vehicle for deflection of attention from others.[60] Perhaps the most telling statement was made by Captain Roger MacDonald, Secretary General of IFSMA when he expressed his bewilderment at how "a democratically elected European Government got away with locking up a ship master for three months in a high security prison without charge and without access to lawyers. This demonstrated a collective failure to uphold the rule of law."[61]

Deprivation of Shore Leave

The port or coastal state authority may refuse a seafarer entry into the country in which case he is confined to remain on board. In recent times, certain states have imposed visa requirements on seafarers of certain nationalities requiring them to stay on board. These nationalities are supposedly security risks. The anomaly is that the ship itself is not a security risk because it is granted clearance to enter the port, but individuals of certain nationalities are. Granted that it is the sovereign right of each state to permit or prohibit the entry of foreigners into their country, is such action consonant with the principle of equality before the law? Denial of shore leave to seafarers who have spent weeks and sometimes months at sea is by any standard a violation of basic human rights and dignity. All too often, those who deny seafarers shore leave under one pretext or another are the so-called champions of human rights and democracy.[62]

As pointed out by Captain Chowdhury, a Maritime Administrator and former seafarer, it is not always practicable to obtain prior visas from a

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[58] IMO News, Issue 3, 2005 at p.4.

[59] Aline de Bievre, "An ill wind blows for seafarers in this wretched climate of fear", *Lloyd's List,* 20 October, 2004.

[60] See Michael Grey, "Speaking up for the Shipping Industry" in *Lloyd's List,* 25 July 2005 at p.6.

[61] de Bievre, *supra*, note 59.

[62] F.R. Chowdhury, "Seafarers' Rights and Privileges", unpublished paper, 2005.

seafarer's own country. Not every crew-supply country has foreign diplomatic missions of the states who require visas. Sometimes poor seafarers are grossly disadvantaged by having to travel long distances and undertake onerous financial expenditures to obtain a visa.[63] In instances where crew members are prohibited by the port state authorities from going ashore, shipowners are forced to employ armed guards on the ship. This, of course, is utterly degrading and humiliating. Apart from that, seafarers of these "prohibited" nationalities are being deprived of making a living from seafaring because shipowners are reluctant to recruit them due to the extra costs involved in hiring armed guards, which, of course, is of financial benefit to the port state that imposed the requirement.

Undue Harassment

At a different threshold of unfairness in this regard, harassment of third world crews in certain developed countries has become notoriously deplorable. In one instance, the owners of a ship whose crew were under shipboard confinement due to lack of visas, were hammered with an enormous fine because the crew stepped off the gangway to collect perishable food supplies which had been dumped on the wharf and the carpenter had gone down to connect the hose to take in fresh water. The offence so committed by the crew had potentially "exposed the population of a global superpower to terrifying risk from visa-less alien seafarers".[64] In another incident, 200 armed navy personnel boarded a ship and held the crew at gunpoint when it was about to depart; this despite the fact that the local court had ruled that the navy should escort the ship out of the port. The case involved a dispute where local officials had alleged that the ship had used improper travel documents and the court had ruled in favour of the shipping company.

Current Initiatives

The question that is being asked frequently is – what can be done to change the situation around, to better the seafarer's lot and propagate an image of the international seafarer that he rightfully deserves?[65] No doubt the issue of criminalization and unfair treatment of seafarers has catapulted to the top of the global maritime agenda after the notorious incidents of the *Prestige* and the *Tasman Spirit*. In addition, the perception in some countries that seafarers, particularly of certain nationalities are security risks, or to put it bluntly, potential terrorists, has fuelled grave concern among seafarers, particularly of the younger generation who aspire to join the profession, as well as the shipping community at large.

Concern has been raised in some quarters regarding the mandate of the

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[63] F.R. Chowdhury, "Shore Leave – A Basic Right for Every Seafarer", unpublished paper, 2005.

[64] Michael Grey, "The aliens are about to land" in *Lloyd's List*, 30 August 2005 at pp. 8-9.

[65] Hed, *supra*, note 8 at p. 15.

Joint IMO-ILO Ad Hoc Expert Working Group, and consequently, that of the CMI Working Group, being confined to a consideration only of fair treatment of seafarers in relation to "maritime accidents". This narrowness essentially extends only to marine pollution issues and perhaps peripherally, to safety issues, but absolutely ignores the equally important issue of shore leave. In the opinion of this writer, this is a serious anomaly for several reasons. First, pollution is the issue, perhaps the only issue in this context that relates to criminalisation of the seafarer, given that a pollution violation under MARPOL or its domestic equivalent is undoubtedly an offence, whether characterised as "criminal" requiring proof of *mens rea*, or "regulatory" requiring proof only of the *actus reus*. Yet, both the Working Groups mentioned above have been reluctant to use the term "criminalisation" and have substituted the term "unfair treatment". It is submitted that it is the non-pollution issue of the seafarer's predicament, specifically his treatment as a potential security risk and the consequent issue of deprivation of shore leave that squarely fits the caption "unfair treatment". If unfair treatment, which is broader than criminalization is the chosen term, then there is no justification for excluding consideration of shore leave and other multifarious atrocities hurled by officialdom at seafarers from the mandates of these Working Groups which this phraseology undoubtedly accommodates.

The second point, speaking from the practical perspective of a former mariner, is that one would find little comfort in being told that one's unfair treatment in relation to marine pollution accidents is worthy of consideration by law makers, but in other circumstances one would have to put up with being treated unfairly. This is quite preposterous particularly because the number of times a seafarer is likely to be involved in a pollution incident is considerably less compared to the potential for being treated unfairly in other circumstances such as deprivation of shore leave. Notably, organisations such as the Nautical Institute and the International Federation of Shipmasters' Associations (IFSMA) whose members are practising and former mariners also subscribe to this view.

Conclusion: The Way Forward

As radical and drastic a measure as it may seem, perhaps every ship everywhere in the world should come to a grinding halt, not for 2 weeks as Captain Chowdhury suggests,[66] just 2 days should suffice. The harsh nightmare of a world without ship or cargo and empty supermarket shelves even for 2 days, will jolt the modern consumer society to a rude awakening. Those who actively promote and support criminalising seafarers should perhaps volunteer to replace them on just one voyage across the North Atlantic in winter.

The unforgiving sea and its rigours have "encouraged seafarers to build a tradition of selfless endeavour and of high regard for others, particularly those who find themselves in difficulty or distress."[67] It is about time that states much

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66 Speares, *supra,* note 34 at p. 5.

67 IMO News, *supra*, note 58 at p. 4.

of whose seaborne trade and prosperous economies are largely dependent on seafarers cease to treat them as "human pawns in legal and political games" and reverse their despicable attitudes.[68]

The grim situation regarding the treatment of seafarers must be turned around before it is too late otherwise no young person in the 21st century will wish to pursue a seagoing career. What little is left of the lure and call of the sea will reach its vanishing point. Shipping and seaborne trade which is the lifeblood of every nation will come to a halt. Such an eventuality will be far more serious than a peril of the sea for all of us, seafarers and landlubbers alike and there will be no indemnification available for this mammoth loss to humanity.

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[68] See de Bievre, *supra*, note 59.

D. RULES OF PROCEDURE IN LIMITATION CONVENTIONS

INTRODUCTION TO THE PRESENTATION OF THE RESPONSES TO THE QUESTIONNAIRE

BY GR. J. TIMAGENIS

In accordance with its Constitution, the purpose of Comité Maritime International is "*to contribute by all appropriate means and activities to the unification of maritime law in all its aspects*".

To this end CMI shall (a) "*promote the establishment of national associations of maritime law*" and (b) "*co-operate with other international organizations*".

CMI has promoted the unification of maritime law very successfully in the past by preparing a number of important conventions.

Now, that treaty making has passed to intergovernmental organizations, especially within the system of the United Nations, CMI continues its activities in accordance with its constitution by cooperating with international organizations and in particular with IMO. More specifically, it carries surveys in national legislation through the "*questionnaires*" which CMI sends to the National Maritime Law Associations and prepares reports and draft instruments submitted to the appropriate international organizations.

In addition, CMI continues its autonomous activity for the unification for maritime law in the area of implementation of international conventions for the purpose of contributing to a more harmonized application of the conventions. In this connection, CMI carries surveys (through the questionnaires) of national legislations to see how the international conventions on maritime law have been implemented and applied by various countries and also collects court decisions of national courts concerning the interpretation and application of these conventions. These court decisions in summary are posted on the web site of CMI and they may also contribute to a more harmonized understanding and a hopefully more harmonized interpretation and application of the maritime conventions.

At this point, I feel obliged to stress that credit should be given for this activity primarily and mainly to Professor Francesco Berlingieri, Chairman of International Working Group on the "*Implementation and Interpretation of International Conventions*", who has the main burden for this activity and we should thank him for its success so far.

The subject with which I will deal, is to present you the results of the survey carried by CMI pursuant to the questionnaire concerning the way that the International Conventions concerning limitation of liability have been implemented in national legislations, especially in connection with the procedural rules concerning the limitation, the establishment of and the administration and distribution of the fund.

This subject falls within the broader activity of CMI concerning the Implementation and Interpretation of International Conventions. We have international conventions (which definitely contribute to the harmonization of maritime law). However, there is very big diversity in the way that these conventions have been implemented and in the way they are interpreted and applied in the context of the national legislation of various countries.

The purpose of this work of CMI is to explore the possibilities of and to contribute to the coordination and harmonization of the procedural rules of the Limitation Conventions and in fact those which provide for the establishment of a limitation fund. The conventions falling within this survey are:

(a)The "*International Convention on Limitation of Liability for Maritime Claims London 1976*" (LLMC);

(b)the "*International Convention on Civil Liability for Oil Pollution Damage*" (Brussels 1969 / Protocols 1976-1992) (CLC).

At this point it should be noted that the survey does not deal with the "*International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage*" 1971/1992, because this is an international fund; and

(c)the "*International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious substance by Sea*" 1996 (HNS).

The project is useful (in that the need for harmonization is obvious), it is within the purposes of CMI (in that it contributes to the unification of maritime law) and it is autonomous (in that no other Organization is dealing with this matter). However, it appears to be very ambitious because the problem relates to the national procedural law which is probably the most technical and special part of any national legislation and at the same time it is an integral part of the whole judicial system which is special in each country. However, as it will be noted further we believe that realistically we may succeed in providing at least some guidelines for a more harmonized application of the relevant conventions.

What we have done up to now is to prepare, as usual, a questionnaire. At this point I have also to give credit to Professor Berlingieri who was the basic drafter of this questionnaire with a very small contribution on my part.

Seventeen (17) countries have replied. I understand that a reply has been prepared by the UK Maritime Law Association as well. Unfortunately we have not received this reply until now. However, it will be definitely taken into account in the subsequent work on the subject.

Some of the countries which replied were parties to both the LLMC Convention and the CLC. Some of the countries which replied were only parties to the CLC.

None of the countries which replied was party to the HNS Convention. As a result the HNS Convention was the first "casualty" in the process, which means that we do not have any feed back on the implementation of this convention.

Consequently, we have replies only in respect of the LLMC Convention and the CLC.

On the basis of these replies there were prepared:

(a) a Digest of Replies (i.e. each reply of all the countries were put under the respective question); and

(b) an analysis or summary of the replies.

I have to note at this point that we should thank Professor Francesco Berlingieri again for this work since he had the main burden of preparing these documents with a very small assistance and comments on my part.

Both these documents are posted on the website of the Colloquium.

An additional reply was received after the preparation of these documents. This is the reply of Belgium which is posted separately on the website of the Colloquium.

From the replies received we concluded that some of the issues relate only to one of the two conventions rather than both. In respect of some replies it was not clear whether they refer to one of the convention or the other or both. Some national associations have not replied to all the questions, while for some replies there is a possibility that they are not correct. However, even the replies which are possibly not correct give useful material and food for thought in connection with the subject.

For this reason we are considering at the next stage to work probably on one convention at the first stage and then add the material for the other, which may be the same or it may differs from the first. It is possible that we may work at the first stage on LLMC Convention and then add the CLC elements. Of course this is a decision to be taken by the Executive Council but any ideas which may arise from the discussion in this Colloquium will be taken into account.

Further, from the replies it becomes apparent that some of the questions were more tricky than originally expected. Thus for example question (b) i.e. "*In which manner the limitation of liability may be invoked and whether this action must precede the constitution of the fund*", seems to have a number of subordinate questions. For example, this question seems to relate:

(a) To the question whether the limitation action may start before or after an action in respect of a claim against the shipowner is brought.

(b) Whether the limitation may be invoked by an independent action or as a defense in pending proceedings or both (and how pending proceedings concerning claims against the owner may be consolidated or not).

(c) How exactly limitation may be invoked without establishing the fund (or before establishing the fund). This question relates to proceedings on the merits or proceedings for security (arrest). Of course this question relates only to LLMC Convention because the establishment of the limitation fund is a condition for invoking the limitation under the CLC.

(d) Whether and how the limitation may be invoked in other pending proceedings – possibly before another court – after the establishment of the fund.

(e) What are the effects of invoking the limitation without establishing a fund or after the establishment of a fund.

(f) What kind of evidence should be produced before a Court to stay proceedings, if the fund has been established before another Court.

(g) How exactly you establish the fund (i.e. do you need the permit of the Court to establish the fund or you may simply deposit the fund).

All these issues arose from the replies given by various countries to the questionnaire.

Now I will present the results of the survey and I hope that at the end we shall have some time for discussion.

The Executive Council of CMI will decide what to do next but of course the results of any discussion in this Colloquium will be taken into account.

Probably, at the first stage, there will be prepared draft guidelines setting the issues (as they arise from the replies) and possible solutions (not necessarily a single solution but alternative solutions).

ANALYSIS OF THE RESPONSES TO THE QUESTIONNAIRE

BY FRANCESCO BERLINGIERI AND GREGORY TIMAGENIS

I

The Executive Council of the CMI at its meeting held in Paris on 15 April 2005 thought that it might be interesting to carry out an investigation on the question whether some attempt could be made in order to unify, at least in part, the national procedural rules in respect of limitation of liability under the various international conventions, and, in particular, the LLMC Convention, the CLC and the HNS Convention.

Prof. Francesco Berlingieri informed the Executive Council that he would be willing to carry out this study in association with Mr. Gregory Timagenis and after having received a mandate in this respect from the Executive Council prepared, with the assistance of Mr. Timagenis, a questionnaire for the National Associations. An analysis of the responses to the Questionnaire received as of 31 January 2006 was then prepared and was presented by Mr. Timagenis at the Cape Town Colloquium. Such analysis was subsequently updated on the basis of the responses received as of May 31, 2006 and is attached hereto.

II

ANALYSIS OF THE RESPONSES RECEIVED AS OF MAY 31, 2006

Responses to the Questionnaire have been received from the following Associations:

Argentina, Australia, Belgium, Chile, China, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Mexico, New Zealand, Norway, Slovenia, Sweden and Venezuela.

All the above countries are parties to CLC 1969 (Denmark) or 1992 while only the countries underlined are also parties to the LLMC Convention 1976. However Chile has incorporated some of the provisions of the LLMC Convention into its national law and the NMLA of Chile has provided responses also to the questions relating to that Convention.

QUESTION (a):

Whether the constitution of the limitation fund is a condition for the availability of the benefit of limitation (this question is relevant only for the LLMC Convention).

Limitation of liability may be invoked notwithstanding that a limitation fund has not been constituted in Australia, Belgium, Chile, Denmark, France, Greece, Ireland, New Zealand, Norway and Sweden. In Germany, Mexico, the Netherlands, Slovenia and Venezuela the constitution of the fund is required.

QUESTION (b):

In which manner the limitation of liability may be invoked and whether this action must precede the constitution of the fund.

Article V(3) of CLC 1992 so provides in its relevant part:

3. For the purpose of availing himself of the benefit of limitation provided for in paragraph 1 of this Article the owner shall constitute a fund for the total sum representing the limit of his liability with the Court or other competent authority of anyone of the Contracting States in which action is brought under Article IX or, if no action is brought, with any Court or other competent authority in anyone of the Contracting States in which an action can be brought under Article IX.

Article 11 (1) of the LLMC Convention so provides in its relevant part:

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation.

(i) How limitation may be invoked

CLC 1992

Only Argentina, Australia, Germany, Greece, Ireland, New Zealand and Sweden have made a specific reference to the CLC and to the LLMC Convention, while, probably owing to the generality of the question, the other Associations have not expressly indicated to which Convention the response was related. But, except Mexico, who stated that the domestic rules apply to both Conventions, it would appear that it was meant to refer to the LLMC Convention and, therefore, reference will provisionally be made to that Convention, save a future change if such assumption will appear to be incorrect.

In Argentina, Australia, Greece, Italy and New Zealand in order to invoke limitation the fund must be constituted, while in Germany and Mexico limitation may be invoked both before and after an action is brought, but must not precede the constitution of the fund. That appears to be in line with Article V(3). In Finland limitation may be invoked before and after an action is brought or by constituting a fund where proceedings are instituted in respect of claims subject to limitation, but the right to limit requires the constitution of the fund. In Ireland the owner must first apply to the Court for an order limiting his liability, whereupon the Court will order payment of the limitation amount.

LLMC Convention

In Australia, Belgium, Chile, China, Denmark (probably), France, Germany, Greece, Ireland, Mexico, Netherlands, New Zealand, Norway and Slovenia limitation may be invoked either before proceedings in respect of claims subject to limitation are brought against the person liable (in which event the constitution of the fund is required in Venezuela) or as a defence, after

proceedings have commenced. In the former case the competent Court is in the Netherlands the Court of the place where the vessel is registered or, if the vessel is of a foreign nationality, the Court of Rotterdam. In Greece the competent Court is the Court before which a claim is brought. In Norway the competent Court must be a Court competent in respect of claims arising out of the event in respect of which limitation is sought. In Sweden no specific action is needed nor is there any specific manner in which the limitation may be invoked.

QUESTION (c):

In which manner the limitation fund may be constituted, in addition to depositing the sum.

CLC 1992

The type of security is decided by the competent Court, in its absolute discretion, in Australia, Belgium, Chile, China, Denmark, Finland, Germany, Mexico, the Netherlands, New Zealand, Norway and Slovenia. Some restrictions exist instead in Argentina, where it is required that the guarantor, besides being solvent, must be domiciled in Argentina; in Greece, where the fund may be constituted either by depositing the sum with a bank operating in Greece or by a guarantee issued by a bank operating in Greece; in Italy, where the guarantee must be either a bank or an insurance guarantee issued in conformity with the laws and regulations that authorise and govern the banking and insurance services in Italy.

Even more strict requirements exist in Ireland, Sweden and Venezuela, where the limitation amount must be paid into Court.

LLMC Convention

The requirements are the same in Chile, China, Denmark, Finland, France, Germany, Greece, Mexico, the Netherlands, Norway, Slovenia, Sweden and Venezuela. In Ireland the strict requirement existing for the CLC does not apply and rules similar to those existing in the other countries apply.

QUESTION (d):

Whether the limitation fund is a condition in order to invoke the limitation or not, is there in your law a time limit within which the fund must be constituted.

No statutory time limits exist in Australia, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Mexico, New Zealand, Norway, Sweden and Venezuela. In Argentina , Chile and China the time limit is related to the completion of a certain stage of the proceedings, e.g. prior to the issuance of the judgment. In Italy, the Netherlands and Slovenia there are instead statutory time limits: in Italy the guarantee must be made available concurrently with the request of limitation, in the Netherlands the limit is fixed by the Court but cannot be beyond one month from the order of the Court, in Slovenia the fund must be constituted within 15 days of the decision whereby the constitution is authorized.

QUESTION (e):

Which information the owner must provide to the Court.

Since the information varies from country to country, a list of the matters in respect of which information is required follows, with the indication of the countries that require it.

(i) name and address of applicant: Australia and New Zealand;
(ii) description of the event giving rise to the liability: Australia, Belgium, Chile, Finland, Germany, Greece, Mexico, Netherlands, New Zealand, Slovenia, Sweden, Venezuela;
(iii) details of the vessel: Australia, Belgium, Germany, Greece, Italy, Mexico (tonnage certificate required), Netherlands, New Zealand, Norway;
(iv) list of claimants and amount of each claim: Belgium, Chile, China, Finland, France, Germany, Greece, Italy, Mexico, Netherlands, Norway, Slovenia, Sweden, Venezuela;
(v) name and address of respondent: Australia and New Zealand;
(vi) limitation amount and manner of calculation: Argentina, Belgium, Chile, China, France, Greece, Netherlands, Slovenia, Venezuela;
(vii) reasons for constitution of the limitation fund: Australia, China and New Zealand;
(viii) manner of constitution: Chile, Greece, Slovenia;
(ix) appointment of a process agent: Greece;
(x) official rate of exchange between national currency and US dollar and SDR: Mexico.

QUESTION (f):

Whether notice must be given to the claimants of the commencement of the limitation proceedings and which directions are set out as to the manner in which they must file their claims in such proceedings.

By whom and how notice of the proceedings must be given to the claimants

(i) by the petitioner: Ireland;
(ii) by the Court or by the Court appointed receiver or other officer: Argentina, Australia, Belgium, Chile, China, Finland, France, Italy, Mexico, Netherlands, New Zealand, Slovenia, Sweden, Venezuela;
(iii) by means of publication in the national Official Journal and in leading newspapers: Argentina, Belgium, Chile, China, Denmark, France, Germany, Netherlands.

Information and directions

(i) name of applicant: China, Finland, Venezuela;
(ii) name of vessel: Venezuela;
(iii) time by which claims must be filed: Australia, Chile, China, Finland, France, Italy, Mexico, Netherlands, New Zealand, Norway, Venezuela;
(iv) particulars required for the proper filing of the claims: China, Finland, Slovenia, Venezuela;

(v) other useful directions for the participation in the proceedings: Netherlands, Norway.

QUESTION (g):

Which is the time limit, if any, within which the claims must be filed and which are the consequences of the failure to file the claims within such time limit.

Time limit

It is fixed by statute in Belgium (art. 48 of the Maritime Code refers to the old bankruptcy law pursuant to which claims may be submitted until distribution), Chile (30 days), Finland (before distribution of the fund), France (30 days with possible extension to 40 and 50 days), Italy (30 days and 60 days for claimants resident abroad), Slovenia (90 days) and Venezuela (30 days).

It is fixed by the Court, normally within a time frame fixed by statute, in Argentina (between 20 and 60 days), Australia (usually 28 days), China (there does not seem to be a time frame), Denmark (not less than 2 months), Germany (not less than 2 months and 6 months for claimants resident abroad), Greece (not less than 15 days and not more than 6 months in respect of CLC, subject to extension, and 3 months in respect of LLMC), Mexico (fixed at the discretion of the Court), the Netherlands (not later than the date set by the Court), New Zealand (usually 28 days), Sweden (not less than 2 months).

Consequences of non compliance

The consequences of the failure to file the claim within the prescribed time limits vary considerably in the various jurisdictions:

(i) loss of the right to participate in the distribution of the fund: Argentina (subject to a Court decision), Belgium, Chile, China, Denmark (only after judgment on distribution), Germany (only after judgment on distribution), Greece (in respect of CLC), Norway (only after judgment on distribution), Ireland, Netherlands (save later allowance by the Court);
(ii) loss of the right to participate in the initial distribution, without prejudice to the right to participate in the distribution of the surplus: Italy, Finland;
(iii) deemed acceptance of the amount of the claim indicated by the petitioner: France (where, however, this rule does not seem to be applied in practice);
(iv) loss of the right to challenge the amount of the fund: Chile;
(v) loss of the right to challenge the benefit of limitation: Chile;
(vi) payment may be made only if an amount has been set aside by the Court: Sweden;
(vii) delivery of judgment by default: Australia and New Zealand.

QUESTION (h):

In which manner the claims of the claimants are assessed and whether such assessment may be challenged and how.

In many jurisdictions there seem to be fundamentally two stages. In the first stage the claims are verified either by a judge or a person appointed by the

Court (receiver, administrator, marshal, etc.) who prepares a project of distribution. In the second stage the project of distribution is discussed at a hearing amongst all parties and if it is challenged, the Court will issue a judgment confirming or amending the project; such judgment may be final or subject to appeal. This seems to be the case in Argentina, Belgium, Chile, China, Denmark, Finland, France, Germany (probably), Greece, Italy, Netherlands, Norway and Sweden. There are of course variations as regards the original proof of the claim (for instance in China and Slovenia a distinction is made according to whether the claim is evidenced by a judgement or award or not) and the procedure within each of the basic stages. In Australia and New Zealand the claims are assessed by trial, before a single judge.

QUESTION (i):

To which extent is the subrogation of any person who has paid any amount of compensation in respect of claims subject to limitation permitted.

The same rule holds in all jurisdictions except Slovenia. The person who has paid a claimant acquires by subrogation the rights of the claimant up to the amount paid.

QUESTION (j):

Within which set of proceedings and at which time may the counterclaim mentioned in Article 5 of the (LLMC) Convention be raised.

In Australia, Denmark, Germany, Netherlands, New Zealand, Norway, Sweden and Venezuela a counterclaim may be raised in the limitation proceedings normally prior to the final decision on the distribution of the limitation amount. In Belgium, Finland, France, Greece, Ireland and Mexico it may be raised in the proceedings on the merits brought against the owner.

QUESTION (k):

What is the position of a person who has a claim subject to limitation and has recovered a part of such claim out of other assets of the person liable and subsequently makes a claim against the fund; how does Article 9 (of the LLMC Convention) apply in such case.

There does not seem to be any express provision in this respect in the laws of the countries whose NMLAs have sent responses so far. Slightly different views have been expressed:

(i) the claimant may claim against the fund the unpaid balance of his claim (Chile, Finland, Germany, Norway and Sweden) and the person liable may claim against the fund the amount paid (Germany, Norway);
(ii) any decision is left to the Court, who may even decide that the claimant has forfeited his right to claim against the fund: Netherlands, Venezuela;
(iii) the amount recovered is deducted from that payable out of the fund (Mexico).

It is thought that the proper solution is, similarly to what happens in bankruptcy proceedings, to protect the other claimants and avoid that the recovery by one claimant of a part of his claim out of other assets of the person liable might reduce their share of the fund. At the same time also the person liable should, provided this does not adversely affect the other claimants, be protected. Probably a distinction should be made according to whether he has paid before or after the petition for limitation. Only if he has paid after filing the petition, he should be allowed to claim against the fund the amount paid.

QUESTION (l):

Whether a plan for the distribution of the fund among the claimants must be prepared and by whom.

In some jurisdictions (China, Italy, Netherlands) the plan for distribution is prepared by the claimants amongst themselves and only if they cannot reach an agreement is prepared by the Court. In other jurisdictions (Belgium, Chile, Denmark, Finland, France, Germany, Greece, Mexico, Netherlands, Norway, Slovenia, Sweden and Venezuela) it is prepared by the Court or the person in charge of the fund (administrator, liquidator, etc.). In still other jurisdictions (Australia and New Zealand) there is no requirement for any particular party to prepare a plan for distribution of the fund. The Court will manage the distribution.

QUESTION (m):

Whether the plan may be challenged and how.

A distinction must be made according to whether the plan has been agreed by all claimants or not. If it has been agreed, it obviously cannot be challenged. If it has been prepared by the person in charge of the fund or by the Court it may be challenged (Belgium, Finland, Greece, Italy, Mexico, Netherlands, Slovenia, Sweden and Venezuela: a time limit is specified in Greece, Italy and the Netherlands) or may be deemed to be final and binding (China, France). In Australia and New Zealand directions can be sought by the Court.

QUESTION (n):

Whether in the case of the plan being challenged the distribution must be stayed until a final decision or not.

Distribution starts only when the plan becomes final in Belgium, Denmark, Finland, Germany, Italy, Mexico, Netherlands, Norway, Slovenia and Sweden. Distribution may start after a reasonable part of the fund is set aside in Argentina, Chile, Finland, Greece, Venezuela. In Australia and New Zealand if directions are sought by the Court distribution is stayed until they are delivered.

QUESTION (o):

Which are the effects of the bankruptcy of the owner on the limitation proceedings.

In Argentina, Belgium, Chile, France, Germany, Greece, Ireland, Italy, Mexico, Netherlands, Norway, Sweden and Venezuela after the fund is constituted a subsequent bankruptcy does not affect the fund and its distribution. In Denmark the fund proceedings continue, but with the bankruptcy estate acting as the competent party. It is not clear however, whether the relevant time is the date of commencement of the limitation proceedings or that of the actual constitution of the fund, if subsequent. It would appear that if bankruptcy proceedings are commenced before the limitation proceedings (or the constitution of the fund) the separate administration of the fund would not be permissible but this issue is worthy of further investigation. In Finland if the fund has been constituted by depositing a guarantee, the fund does not become part of the owner's bankruptcy estate; the position is instead unclear in case of a cash deposit. In Australia it is likely that the constitution of a limitation found could be considered to be a voidable transaction within the meaning of s588FE of the Corporations Law (similar provisions exist in relation to personal bankruptcy). Thus, depending upon the timing of the insolvency of the shipowner in relation to the winding up and the constitution of the fund, the establishment of the fund could be set aside to ensure that those funds are available to the general creditors. A similar result would follow in New Zealand law.

QUESTION (p):

Whether there are any other issues relating to the limitation procedure that are worth mentioning.

The following issues have been mentioned in the responses to the Questionnaire:

In Australia the procedural rules apply generally to matters arising under: the CLC, the LLMC or any other international convention that is in force in relation to Australia and makes provision with respect to the limitation of liability in relation to maritime claims.

Belgium informs that it is generally believed that arrests must be lifted immediately. However, the Arrest Judge has the right to decide *prima facie* without binding the substantive Court that the difference between the limitation fund and the amount of the claim should be secured and that the arrest is not lifted until the difference will be secured by a bank guarantee if he finds that the Petitioner has committed an intentional or inexcusable fault barring him from the right to limit his liability. He may also - again on a preliminary basis and without binding the substantive Court - find that a particular claim falls outside the scope of the limitation (and should therefore be guaranteed).

Chile has raised the issue of the effect of limitation proceedings on enforcement or protective measures.

Denmark has raised the issue of the relationship between the European Convention on Jurisdiction and the Enforcement of Judgment (now Regulation (CE) 44/2001) and the LLMC Convention.

France has raised the issue of the competent Court by which limitation proceedings should be conducted and of the consolidation of all proceedings in respect of claims subject to limitation.

Greece has provided information on the jurisdiction of the Greek Courts and the challenge of the right to limit.

The Netherlands has raised this latter issue as well.

In New Zealand the procedural rules apply generally to matters arising under: the CLC, the LLMC or any other international convention that is in force in relation to New Zealand and makes provision with respect to the limitation of liability in relation to maritime claims. The Court has no power to order the applicant in limitation proceedings to constitute a fund. See *Tasman Orient Line CV* v. *Alliance Group Ltd.* [2004] 1 NZLR 650.

Venezuela has mentioned that after constitution of the fund all individual enforcement actions (arrest and seizure) on other assets of the debtor are stayed.

II
Future Action

It is suggested that the CMI might consider the feasibility of guidelines on limitation proceedings in connection with the LLMC Convention, the CLC and the HNS Convention. It is also suggested that this investigation should start with the LLMC Convention. The following issues could be worthy of exploration if it will be decided to commence an investigation in respect of the LLMC Convention:

1. *Court competent for the conduct of limitation proceedings*
2. *Whether constitution of the limitation fund should be obligatory*
3. *Information to be provided and document to be produced by the person applying for limitation*
4. *At which stage of the proceedings the fund should be constituted*
5. *In which manner the fund should be constituted*
6. *Time limits for the filing of claims by the claimants*
7. *Consequences of late filing of claims*
8. *When and by whom the claims should be verified and whether consolidation of proceedings should be provided*
9. *Review of the plan for distribution of the fund*
10. *Consequences of recovery by claimants subject to limitation from other assets of the person liable*
11. *Subrogation*
12. *Bankruptcy of the person liable and its effect on limitation proceedings*

DIGEST OF THE RESPONSES RECEIVED FROM
Argentina, Australia, Belgium, Chile, China, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Mexico, Netherlands, New Zealand, Norway, Slovenia, Sweden, Venezuela

Introduction

Argentina

1. Argentina is a Party to the CLC PROT 1992, but not a party to either the LLMC 1976 and the HNS 1992. Thus, the comments and information provided in this paper of the Argentine Maritime Law Association should be exclusively related to the CLC PROT 1992.

2. Claims out of oil pollution are not specifically contemplated among those credits for which a ship-owner can limit its liability, but they fall into the so called "claims for loss of property or rights or damages arising therefrom" set out in Section 177 (b) of the Argentine Navigation Act. Therefore, the procedural rules on the shipowner's limitation of liability put forth in said Navigation Act are applicable to the cases governed by the CLC PROT 1992.

Belgium

As a general comment I must say that – and I believe Patrick Griggs made the same observation – it would be unwise to impose too strict procedural rules binding all the national states. The *Travaux Préparatoires* of f.i. the Arrest Convention show that procedure is often left to the *lex fori* which seems logical.

In Belgium the ex parte application to the President works really well. In one particular collision case where my client wanted to avoid an arrest on one of his vessels I went to see the President at 23.00hrs. The limitation fund was put in place within 4 days and an arrest that meanwhile had indeed been made was immediately lifted by my opponent.

Belgium is Party to both CLC 1992 and LLMC 1976.

Chile

According to Chilean Law, the constitution of the limitation fund in respect of maritime claims is ruled by the Code of Commerce (C. Com).

As far as claims relating to oil pollution are concerned, although the person entitled to limit liability must constitute a separate fund, the procedural rules are the same of the Commercial Code. Moreover, Chile has not ratified the LLMC, but some of its rules have been incorporated by the Code.

Bearing in mind the above, we reply the questionnaire as follows.

Finland

Finland has denounced the LLMC 1976 with effect from 13 May 2004, and has ratified both the Protocol of 1996 to amend the LLMC 1976 and the CLC 1992. General rules on limitation of liability for maritime claims are included in Chapter 9 of the Finnish Maritime Code (674/1994), while Chapter 10 contains provisions on liability for oil pollution damage. Furthermore, rules on limitation funds covering both limitation

actions and claims for compensation for oil pollution damage are included in Chapter 12. Finland has not yet ratified the HNS Convention of 1996.

Greece

CLC

Greece acceded to the International Convention on Civil Liability for Oil Pollution Damage 1969 (The CLC 1969) on 29 June 1976. The CLC 1969 was enacted in Greece by L.314/1976 (Ratification of the Brussels International Convention on Civil Liability for Oil Pollution Damage 1969 and Associated Matters) and entered into force on 27 September 1976.

Greece also acceded to the 1976 Protocol to the International Convention on Civil Liability for Oil Pollution Damage (The CLC PROT 1976) on 10 May 1989. The CLC PROT 1976 was enacted in Greece by the P.D.81/1989 (*Acceptance of the 1976 Protocol to the International Convention on Civil Liability for Oil Pollution Damage 1969*) and entered into force on 8 August 1989. The CLC 1969 was denounced on 2 May 1997 with effect as of 15 May 1998.

Greece ratified the 1992 Protocol to amend the International Convention on Civil Liability for Oil Pollution Damage (The CLC PROT 1992) on 9 October 1995. The CLC PROT 1992 was enacted in Greece by the P.D.197/1995 (*Ratification of the 1992 Protocol to amend the 1969 International Convention on Civil Liability for Oil Pollution Damage and Associated Matters*) and entered into force on 9 October 1996. Today Greece applies the CLC 1969 as amended by the CLC PROT 1992 (hereinafter "*the 1992 Liability Convention*").

Further Greece has adopted a number of procedural rules in order to give effect to the provisions of the convention. These rules are found in the Greek Presidential Decree No. 666/1982 (Foundation, Management and Distribution of the Shipowner's Limitation Fund for Oil Pollution Damage), as amended (the Greek Pollution Decree).

LLMC Convention

Greece acceded to the International Convention on Limitation of Liability for Maritime Claims 1976 (LLMC 1976) on 3 July 1991. The LLMC 1976 was enacted in Greece by L. 1923/1991 (*Ratification of the International Convention on Limitation of Liability for Maritime Claims signed in London on 19 November 1976*) and entered into force in the internal legal order on 1 November 1991. In practice, the Convention's provisions set aside, in the great majority of cases, the relevant substantial provisions of the Hellenic Code of Private Maritime Law [hereinafter *CPML*] regulating the same matters (arts. 85 et sqq). According to the unanimous opinion of the legal doctrine and the jurisprudence, the 1976 LLMC applies even in cases in which interests of only Greek nationals are involved.

Greece did not adopt a set of new procedure rules – in the way it did for the Pollution Convention – in order to give effect to the provisions of the 1976 LLMC Convention. According to the prevailing view, adopted by the Greek Courts, the procedural provisions of the CPML (arts 90-104) would apply by analogy in order to cover the matters not regulated by the Convention, and to the extent they are compatible with the provisions of the latter. Another point of view proposes the application by analogy of the Pollution Decree (P.D. 666/1982).

HNS Convention

Greece has not yet acceded to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea of 1996 (HNS 1996).

Italy

CLC

Italy is not yet party to the LLMC Convention and to the HNS Convention.

It is party to the CLC Convention as amended by the 1992 Protocol (which entered into force in Italy on 16th November 2000).

The comments and responses that follow relate, therefore, only to the CLC 1969 and the CLC 1992.

Article 3 of Law 6 April 1977, No. 185 authorizing the President of the Republic to ratify the CLC 1969, authorized the Government to issue a decree, having the value of a law for the purpose of setting out the rules necessary for the fulfilment of the obligations arising out of the said Convention. The Decree of the President of the Republic authorized by the aforesaid Law was issued on 27 May 1978 with No. 504 (dPR 504/1978). It set out certain specific provisions in respect of the constitution of the fund (article 7) and then identified the competent court and provided that existing rules of procedure applicable in respect of the procedure for the limitation of liability of the owner of the tanker was governed by the rules on the domestic limitation of liability of ship operators, "in so far as applicable". This has given rise to problems, since the Italian system differs significantly from that adopted by the CLC (in as much as it is based on the value of the ship at the end of the voyage during which the event triggering the request of limitation occurred, provided it is not below one fifth and not above two fifths of the sound value; if it is lower, the limit is equal to one fifth of the sound value, while if it is higher the limit is equal to two fifths of the sound value) and generally is tailored to the domestic limitation system. The problem of the application of the domestic rules to limitation proceedings under the CLC 1969 has been considered in the case of the *"Patmos"* by the Tribunal of Messina (judgment of 24 June 1985, [1986] Dir. Mar. 439) and then by the Tribunal of Genoa in the case of the *"Haven"* (judgment 29 May 1991, [1991] Dir. Mar. 793). For an analysis of the applicability of the domestic procedural rules in respect of limitation proceeding under the CLC 1969 see F. Berlingieri, *Problemi connessi con l'entrata in vigore per l'Italia della Convenzione di Bruxelles 29 novembre 1969*, [1979] Dir. Mar. 307.

Mexico

CLC and LLMC Convention

Mexico has ratified LLMC 1976 and CLC PROT 1992 and has not ratified the HNS nor LLMC PROT 1996. Claims for Oil Pollution are handled according to CLC PROT 1992 and the Fund Convention 1971 and Fund PROT 1992. For both, Mexican Navigation Act refers to above conventions.

Norway

CLC, LLMC and HNS Convention

1) Norway has ratified the LLMC Convention 1976 as amended by the 1996 Protocol thereto, and the 1996 version of the Convention ("the 1996 Convention") has been the basis for the existing provisions in the Norwegian Maritime Code (*MC*) 1994 chapter 9. Accordingly, Norway is no longer a party to the 1976 Convention in its original version. The MC chapter 9 (§§ 171-182) is applicable in all cases where questions of limitation of liability are brought before a Norwegian court (MC § 182).

Norway has, according to art. 18 para. 1 of the 1996 Convention, made a reservation excluding the application of the 1996 Convention to all claims referred to in art. 2, para.1 (d) and (e). Such claims for wreck removal and removal of cargo, including – when relevant thereto – claims to avert or minimize loss as referred to in art. 2, para. 1 (f), are subject to a separate limit of liability according to the MC §§ 172a and 175a. Under these provisions the minimum limit for each accident is 2 mill. SDR and increases

according to tonnage by 2 000 SDR per ton up to 10 000 tons and 500 SDR per ton for tonnage in excess thereof.

In all other respects the limitation of liability of claims is implemented in particular cases in accordance with a principle of global limitation, the limitation limits and the procedural rules applicable to limitation of liability according to the 1996 Convention.

2) Norway has ratified the CLC Convention 1992 and the Fund Convention 1992, and the provisions thereof have been incorporated in the MC chapter 10 (§§ 191-206).

3) Norway has not yet implemented the HNS Convention 1996, but in 2004 the Maritime Law Revision Committee submitted a report recommending this to be done, and the report contains the necessary draft legislation – a new chapter 11 in the MC (NOU 2004:21 "Erstatningsansvar ved sjøtransport av farlig gods"/ "A liability regime for the carriage by sea of dangerous goods"). It is expected that a bill be brought before the parliament with the spring term of 2006.

4) The main principles as to procedure relating to the three limitation of liability systems now in force have been reflected in certain provisions contained in the MC chapter 9 or 10. Most of the provisions contained in the relevant Convention are included therein.

In addition, however, a separate chapter 12 of MC (§§ 231-245) sets out detailed procedural rules relating to the handling of particular limitation cases in the courts, cf. e.g the 1996 Convention art. 14. These rules are generally applicable regardless of whether limitation is sought according to chapter 9, §§ 172a and 175a, or chapter 10 of MC. It is proposed in the new draft HNS legislation that these rules shall also apply in respect of limitation of liability for HNS claims. A major part of the questions contained in the Questionnaire will have to be answered on the basis of these procedural rules applicable to all types of limitation funds.

Slovenia

CLC and HNS Convention

1. Slovenia is a Party to the CLC PROT 1992 and the HNS 1996, but not a party to the LLMC 1976.

2. The Slovenian Maritime code is based on the LLMC Convention.

Venezuela

CLC, and LLMC Convention

Venezuela has not ratified the Conventions relating to Limitation of the Liability of Owners of Sea-going Ships of 1957 and Limitation of Liability for Maritime Claims of 1976.

However, Venezuela has incorporated the International Conventions on its new Venezuelan Maritime Commerce Law (VMCL), in force since November 2001.

Consequently, the Venezuelan system of limitation of liability follows the principles of the 1976 International Convention on Limitation of Liability for Maritime Claims.

According with article 14 of LLCM Convention, rules of procedure shall be governed by the law of the State Party in which the fund is constituted.

For that reason, VMCL in its Section IV (articles 52 to 74) deals with the rule governing the constitution of a fund. This proceeding is applicable in all cases of limitation of liability allowed by national law, including international conventions ratified by Venezuela. (i.e. CLC and Fund Convention).

Such proceeding follows the principles of LLCM Convention, and French Decree No. 67-967 of 27 October 1967. Such Proceeding as per Venezuelan principles of classification of the laws into substantive and procedural laws is an insolvency proceeding as the bankruptcy proceedings so it is a procedural law.

QUESTION (a):

Whether the constitution of the limitation fund is a condition for the availability of the benefit of limitation.

Argentina

LLMC Convention

As mentioned above Argentina is not a Party to the LLMC.

Australia

CLC and LLMC Convention

No it is not; a party in Australia may invoke its right to limit without constituting a fund.

Belgium

LLMC Convention

It is not a condition. Belgium is Party to the LLMC Convention 1976 (not the 1996 Protocol).

Chile

CLC

The constitution of the limitation fund is not a condition for the availability of the benefit of limitation, but whilst the constitution has not occurred, the person entitled to limit liability cannot rely on the effects of the constitution, such as the bar to other actions and the release of the arrest of ships.

China

CLC

No.

Denmark

CLC and LLMC Convention

The answer is no. The position is set out in the Danish Merchant Shipping Act ("MSA"), Section 180(1), see further below under item (b).

Finland

LLMC Convention

According to the FMC, limitation of liability may be invoked notwithstanding that a limitation fund has not been constituted (cf. Chapter 9, § 7 and § 9). See concerning oil pollution damage, the next reply.

France

CLC and LLMC Convention

The constitution of the limitation fund is not a condition for the availability of the benefit of limitation. The right to limit liability can be raised, as a mean of defence, in the proceedings on the merits even if the fund has not been constituted.

However, pursuant to article 62 of the law of 3 January 1967, the constitution of the limitation fund is necessary to prevent the claimants from arresting the vessel in respect of which the fund has been constituted or any other assets of his owner or to release them from an arrest.

Germany

CLC and LLMC Convention

According to section 487 e II, HGB a person liable may not only invoke the right to limit liability if a limitation fund has been constituted.

Greece

CLC

The constitution of the limitation fund is a condition for the availability of the benefit of limitation of liability (Article 4 para 1 point (c) of the Pollution Decree).

LLMC Convention

Greece has not included in its national law a provision such as the one envisaged by Article 10 para. 1 of the LLMC Convention. Therefore, according to Article 10 para. 1 of the LLMC Convention, limitation of liability is available whether or not the person who evokes the limitation constitutes a limitation fund.

Ireland

LLMC Convention

No, a limitation fund does not need to be constituted in order to avail of the benefit of limitation.[1]

CLC

N/A

HNS Convention

N/A

Italy

CLC

Yes it is, pursuant to article V(3) of the CLC. Article 7 of dPR 504/1978 provides that the owner of the ship in case of pollution damage may apply for the limitation of his liability as provided by art. V of the CLC by means of the production of a suitable bank or insurance guarantee, issued in conformity with the laws and regulations that authorise and govern the banking and insurance services in Italy.

Mexico

CLC, LLMC and HNS Convention

The fund can be constituted or guaranteed, but in order to benefit from the limitation, either the fund must be constituted or guaranteed. Forms of guarantee normally accepted by Mexican Courts are bonds issued by Mexican bonding companies, deposit, letter of credit, etc.

Netherlands

CLC, LLMC and HNS Convention

Pursuant to Dutch law (Article 642*a* (1) of the Dutch Code of Civil Procedure (CCP)), the constitution of a limitation fund is a prerequisite that must be fulfilled before a party can benefit from the limitation of liability provisions in Articles 8:750 and 8:751 of the Dutch Civil Code (DCC).

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[1] Merchant Shipping (Liability of Shipowners and Others) 1996.

New Zealand

CLC, LLMC and HNS Convention

No it is not; a party in New Zealand may invoke its right to limit without constituting a fund.

Norway

CLC, LLMC and HNS Convention

According to MC § 180 the liability for a maritime claim may be limited even if a limitation fund has not been established. However, in such cases the court shall, when applying the limit of liability, only take into account the claims which are included in the action before the court. If the person liable considers that there may also be other claims arising out of the same event, he may ask that a reservation as to the limitation of liability is included in the decision of the court. Notwithstanding such reservation, the judgement can subsequently be enforced in respect of the claims decided upon, unless there is established a limitation fund which will constitute a bar to other actions.

A person liable who has paid claims according to such a decision, may himself submit the claim in any subsequent limitation fund, cf. MC § 176 (Question (i) below).

Slovenia

CLC:

The constitution of the limitation fund is a condition for the availability of the benefit of limitation.

Sweden

LLMC Convention

Pursuant to MC, Chapter 9 Section 9 of the Swedish Maritime Code (below MC) Limitation of liability may be invoked notwithstanding that a limitation fund has not been constituted.

CLC

MC, Chapter 10 Section 6 - The right to limitation of liability for damage caused by oil pollution exists only if a limitation fund has been established.

Venezuela

CLC and LLMC Convention

The constitution of the limitation fund is a condition for the availability of the benefit of limitation.

Article 52 of VMCL provide that the proprietor, shipowner, charter, insurer, salvors, or any other liable person who may consider themselves to have a right to limit liability, may appear before the competent court (Special Aquatic Jurisdiction) and request that proceedings be commenced to constitute the fund, verify and liquidate the claims and to make the distribution according to law.

QUESTION (b):

In which manner the limitation of liability may be invoked and whether this action must precede the constitution of the fund.

Argentina

CLC

In order to invoke the limitation of liability, the limitation fund must be previously constituted (Section 562 of the Navigation Act).

Australia

CLC and LLMC Convention

A limitation proceeding pursuant to the LLMC Convention can be commenced as an action in personam or it can pleaded as a defence. This precedes the constitution of the fund. A proceeding relating to the CLC Convention may only be brought in accordance with paragraphs 1 & 3 of the CLC.

Belgium

LLMC Convention

1. The limitation may be invoked in substantive proceedings as to principle either before proceedings in respect of claims subject to limitation are brought against the person liable or as a defence. F.i. one can ask the Commercial Court to rule that no intentional or inexcusable fault has been made and that one has a right to limitation of liability even (see above) if the fund has not yet been constituted.

2. If one wants to constitute a fund however one should of course present a request for limitation to the President of the Commercial Court who gives a Court Order authorising to limit the liability and setting out the conditions (what sort of guarantee, amount of the guarantee, …). After having seen the bank guarantee, other acceptable guarantee or proof of deposit of the limitation fund the President gives a new Court Order confirming that the limitation fund has been constituted.

Chile

CLC

The limitation of liability may be invoked as an action to obtain the limitation by the constitution of the fund, before an action against the shipowner is brought, or by way of defence after an action has been brought against him.

China

CLC

The shipowner may invoke the limitation of liability in two manners under Maritime Code of the People's Republic of China 1993: (1) apply to a maritime court for constitution of the limitation fund for maritime claims; (2) to invoke the limitation of liability directly as a counterplea against the claims of claimants during the proceedings. This action may not precede the constitution of the fund under Chapter Ix *Procedure for Constitution of Limitation Fund for Maritime Claims* of the Special Maritime Procedure Law of P.R.C. (hereafter referred to the SMPL of the PRC). But this Chapter is deemed imperfect in judicial practice.

Denmark

CLC and LLMC Convention

The position is perhaps best described by quoting (a translation of) MSA, Section 180(1), which provides:

"*The liable party is entitled to limit liability even if no limitation fund has been constituted. The court shall take into account only those claims, which have been raised during the legal proceedings. If the liable party so demands, the judgment shall contain a reservation to the effect that also other claims which are subject to limitation may have to be included in the court's decision as to the limitation amount*".

So, the right to limit liability can be and in the circumstances has to be invoked by way of a reservation prior to the constitution of the fund, if any.

Finland

CLC and LLMC Convention

Limitation of liability may be invoked by 1) a claim for limitation of liability, 2) invoking the right to limit when an action is brought against the shipowner (or other person who has the right to limit), or 3) constitution of a limitation fund when legal proceedings are instituted in respect of claims subject to limitation. However, the right to limitation of liability for oil pollution damage claims requires the constitution of a limitation fund (Chapter 10, § 6).

France

CLC and LLMC Convention

The limitation of liability may be invoked in two different manners:

(i)by the constitution of the limitation fund in accordance with the provisions of the decree of 27 October 1967,

(ii)by raising the limitation, as a mean of defence in the proceedings on the merits, whether the fund has been constituted or not.

There is no limitation proceedings as such.

Germany

CLC and LLMC Convention

The limitation of liability may be invoked as a limiting plea before or within the lawsuit. It must not precede the constitution of the fund.

Greece

CLC

A person who is faced with claims for pollution damage and wishes to limit his liability in accordance with the provisions of the convention (the Debtor) has to file a Statement to that effect before the Secretary of the competent Court of First Instance (Art. 2 para. 1 of the Pollution Decree).

Evidence of the constitution of the fund must be attached to the Statement of the Debtor for the limitation of liability (art. 4 para 1 point (c) of the Pollution Decree); therefore the constitution of the limitation fund is a condition in order to invoke the limitation of liability. Following the Statement for the limitation of liability, the Court assigns the limitation process to a Reporting Judge and appoints a Fund Administrator (art. 6 of the Pollution Decree).

LLMC Convention

The limitation of liability can be invoked at any stage of the legal proceedings, until the completion of the compulsory enforcement procedure. The person entitled to limit his liability (the Debtor) shall file a Statement with the Secretary of the Court of First Instance before which the legal action was instituted (Art. 90 CPML).

In limitation of liability with the constitution of a fund, evidence of the constitution of the fund must be attached to the Statement of the Debtor for the limitation of liability (Arts 90 and 91 CPML). Thus, the constitution of the limitation fund precedes the Statement. Following the Statement for the limitation of liability, the Court assigns by Court Order the limitation process to a Reporting Judge and appoints a Fund Administrator (Article 92 CPML).

Ireland

LLMC Convention

Limitation can be invoked either by pleading limitation as a defence and/or by the issue of limitation proceedings seeking a declaration of entitlement to limit liability. There is no rule as to the timing of the constitution of the fund.

CLC

The ship owner must first apply to the court for an order limiting his liability and then the court will order a payment into court.[2]

HNS Convention

The ship owner will have to first apply to the court for an order limiting his liability and then the court will order a payment into court.[3]

Italy

CLC

The limitation may be invoked by means of an application to the Tribunal in the circuit of which the pollution has occurred. As stated in the response to Question 1, the guarantee must be produced when filing the application.

Mexico

CLC and LLMC Convention

According to Mexican legislation it can be invoked either:

a)Voluntarily, by presenting a guarantee to the Mexican Courts and invoking the limitation of liability in a Voluntary Jurisdiction Procedure.

b)It can be invoked as a defence in Court when there is a claim or sue against the Owners.

Netherlands

CLC and LLMC Convention

Any person who wishes to invoke limitation of liability must apply to the Court where the vessel is registered (if registered in The Netherlands) and otherwise to the Court of Rotterdam (Article 642*a* (1) CCP). The application must be made in writing and should request the Court to establish the limitation amount or limitation amounts and to order the commencement of proceedings to divide the fund to be constituted (Art. 642*a* (1) CCP).

New Zealand

CLC and LLMC Convention

A limitation proceeding pursuant to the LLMC Convention can be commenced as an action in personam or it can pleaded as a defence. This precedes the constitution of the fund. A proceeding relating to the CLC Convention may only be brought in accordance with paragraphs 1 & 3 of the CLC.

Norway

CLC and LLMC Convention

Limitation of liability may be invoked only after legal proceedings in respect of a claim subject to limitation, including arrest, have been brought before a Norwegian court (MC §§ 177 and 195). However, a limitation fund according to MC § 195 (oil pollution) may also be established before legal proceedings is brought, but only with a court which will be a proper venue for claims arising out of the event in question.

A limitation fund can only be established by the court and if requested by the defendant. The fund is established according to a decision by the court (MC § 234).

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2 Section 12 Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

3 Section 14 Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (NB Not yet in force – awaiting a statutory instrument).

Slovenia

CLC

The shipowner may invoke the limitation of liability with the claim addressed to the court, if the conditions under the Maritime code are fulfilled. The conditions are:

(a) description of the event under which the claim arises;

(b) undergrounds and the limitation amount;

(c) the manner in which the shipowner is prepared to constitute the limitation fund (deposit of cash or any other form of guarantee);

(d) the list of known creditors with their registered place of business or domicile;

(e) the nature and the amount of the claims.

His claim does not have to be preceded by the constitution of the fund.

Sweden

LLMC Convention

See above. There is no specific action needed or any specific manner in which the limitation may be invoked.

CLC

Other than constituting the fund, there is no specific action needed or any specific manner in which the limitation has to be invoked.

Venezuela

CLC and LLMC Convention

The limitation of liability may be invoked: (i) as an autonomous action of the shipowner to obtain the limitation by the constitution of the fund; or (ii) by way of defence after an action has been brought against the shipowner.

QUESTION (c):

In which manner the limitation fund may be constituted, in addition to depositing a sum.

Argentina

CLC

Article V (3) of the CLC admits a bank guarantee or other guarantee acceptable under the legislation of the State Party in which the fund is constituted. Under the Argentine legislation bank guarantees or guarantees issued by other third parties are acceptable provided that the guarantor is solvent and domiciled within the jurisdiction of the Court (Section 1998 of the Civil Code).

Australia

CLC and LLMC Convention

The limitation fund may be constituted by a guarantee or by any other form of security acceptable to the court.

Belgium

LLMC Convention

The sum can be deposited at the *Caisse de Dépôt et de Consignation* or in the hands of the Court appointed Liquidator who will open a specific interest generating bank account.

A guarantee is also acceptable, usually from a well known Belgian bank and recently a Club security. It should cover the limitation amount together with a provision for future interests (for two/three years).

Chile

CLC

The fund may be constituted either by depositing the sum or by producing a guarantee considered adequate by the Court, such as a bank guarantee or an insurance guarantee, executable in Chile.

China

CLC

Article 108 of the SMPL of the PRC provides that:

"*A limitation fund for maritime claims may be constituted either by depositing cash or by providing security acceptable to the maritime court.*"

Denmark

CLC and LLMC Convention

The relevant rules are set out in chapter 12 of the MSA, which concerns limitation funds.

Briefly summarised, the fund must be established before the Maritime and Commercial Court of Copenhagen and shall cover the full global limitation amount, plus interest running from the accident/event date to the date of the constitution of the fund on 2% p.a. above the official interest rate. To this amount shall be added a cost amount covering, inter alia, the administration of the fund.

The limitation fund is formally established by way of an order/decision rendered by the Maritime and Commercial Court to that effect, which Court will also decide, whether a cash deposit or other sufficient adequate security is to be procured. The Court will hereafter insert a notice in the official gazette ("Statstidende") confirming the constitution of the fund, calling upon the claimants to present their claims before a fixed date. This notice shall also emphasise that the claimants are no longer entitled to pursue their claims by other individual legal means such as arrest.

Finland

CLC and LLMC Convention

In addition to depositing a sum, also a guarantee may be accepted by the Court where the limitation fund is constituted (Chapter 12 § 4). The courts have in practice accepted guarantees provided by banks and P&I Clubs.

France

CLC and LLMC Convention

The manner in which the limitation fund may be constituted is provided for by articles 59 to 64 of the above decree of 1967.

Pursuant to articles 62 and 63, the fund may be constituted by the deposit of the amount of the limitation into the hands of a bank or other financial institution, appointed to that effect by the Judge of the control of the proceedings (*"juge commissaire"*), or alternatively by a bank guarantee or a Club letter of guarantee drafted to the order of the liquidator of the fund.

The Judge who authorizes the constitution of the fund, decides its form by reference to the customs in such matters and to the jurisprudence.

Germany

CLC and LLMC Convention

By producing a guarantee acceptable by absolute discretion of the court, e.g. bank or insurance guaranty fond.

Greece

CLC

The limitation fund may be constituted either by deposit of a sum in a special bank account held with a Bank operating in Greece or by providing a letter of guarantee by a Bank operating in Greece (Art. 5 of the Greek Pollution Decree). The Letter of Guarantee has to follow a standard wording provided by the Greek Pollution Decree.

LLMC Convention

The limitation fund may be constituted either by depositing the sum or by producing a guarantee acceptable under the Greek Law. No Court involvement is requested for the determination of the limitation amount in case the fund is constituted by deposit of a sum. If a guarantee is produced, the court intervention is necessary in order to evaluate if the said guarantee (a) is acceptable under Greek Law and (b) is sufficient to cover all claims arising from the same incident. The competent court is the Court of First Instance of the place in which the fund is constituted.

Ireland

LLMC Convention

By producing an acceptable guarantee.[4]

CLC

Irish law only envisages the ship owner making a payment into court.[5]

HNS Convention

Irish law will only envisage the ship owner making a payment into court.[6]

Italy

CLC

See response to Question 1.

Mexico

CLC and LLMC Convention

The limitation fund may also be constituted by granting a guarantee to Court satisfaction. This normally can be a bond issued by a Mexican Bonding Company, Letter of Credit issued by a Mexican Bank, etc.

Netherlands

CLC and LLMC Convention

Pursuant to Article 642*c* (2) b) CCP, the applicant has the option of depositing security in an alternative way (e.g. a letter of undertaking from a first class P&I Club or bank) than cash deposit of the limitation amount. However, any alternative way of depositing security must first be approved by the Court in its discretion. Further the alternative security must be good for not only the main sum of the limitation amount, but also subsequent Dutch legal interests from the day of constitution of the fund until the day that the administrator of the limitation fund invites payment of the fund pursuant to Article 642*v* CCP. Finally, the applicant must also provide security for the costs of the limitation proceedings (Article 642*c* (2) a) CCP).

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4 Article 11.2 Convention on Limitation of Liability for Maritime Claims 1976.

5 Section 12 Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

6 Section 14 Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (NB Not yet in force – awaiting a statutory instrument) (?NB Article 9(3) H&N Convention also allows the shipowner to constitute a fund by producing a bank guarantee or other guarantee acceptable under the law of the State and considered adequate by the Court?).

New Zealand

CLC and LLMC Convention

The limitation fund may be constituted by a guarantee or by any other form of security acceptable to the court.

Norway

CLC and LLMC Convention

It is for the court, when deciding upon a request, to decide whether the fund shall be established by depositing the amount or by the submission of adequate security acceptable to the court (MC § 233). In practice, security offered by a reputable liability insurer will be accepted in most cases. According to MC § 234 the court will also determine the additional amount required to cover interests on claims and cost due because of the limitation procedure, whether or not the fund is established according to MC §§ 177 or 195. Such interests and cost are not subject to limitation (MC § 173 no. 6, and § 194).

Slovenia

CLC

If the above mentioned conditions are fulfilled, the court issues the decision under which the limitation fund can be constituted.

In this decision the court requests the shipowner to produce evidence of depositing an appropriate sum. The limitation fund is deemed to be constituted on the day the shipowner produces this evidence.

Sweden

LLMC Convention

MC, Chapter 12 Section 3 – By application. The person applying for constitution of the limitation fund shall pay the amount into court or produce satisfactory security for it.

CLC

MC, Chapter 10 Section 6 paragraph 4 referring to Chapter 12 Section 3 - By application. A party applying for the establishment of a fund shall pay the amount into court or produce satisfactory security for it.

Venezuela

CLC and LLMC Convention

According with article 56 of VMCL, the limitation fund may be constituted only by depositing the fund before the Maritime Court. The fund may only be constituted in cash, negotiable instruments or obligations issued or guaranteed by the Bolivarian Republic of Venezuela.

QUESTION (d):

Whether the limitation fund is a condition in order to invoke the limitation or not, is there in your law a time limit within which the fund must be constituted.

Argentina

CLC

The constitution of the limitation fund is a condition to invoke the limitation [Section 562 (b) of the Navigation Act].The time limit for the constitution of the fund is the expiration of the period for filing defences in the proceedings for the enforcement of a final judgement (Section 561 of the Navigation Act).

Australia

LLMC Convention

The limitation fund is not a condition of invoking the limitation and there is no time limit within which the fund must be constituted.

Belgium

LLMC Convention

There is no limit within which the fund must be constituted but the constitution should of course precede enforcement of Court Decisions against the Debtor in order to be useful.

Chile

CLC

As explained in our reply to question (a) above, the limitation fund is not a condition to invoke the limitation. As a general rule, the limitation may be invoked up to the time limit to oppose defences in the execution of the final judment or award (art. 1212 C. Com).

Exceptionally, when the fund has not been constituted yet, and the limitation of liability has been alleged by way of defence or exception, then the limitation proceeding must be initiated before the competent Court. In these cases, the limitation of liability by the constitution of the fund can only be exerted in the statement of defence (art. 1211 N°3 C. Com.)

China

CLC

The limitation fund is not a condition to invoke the limitation. In Chinese law, there is a time limit before which the fund must be constituted. Article 101 of the SMPL of the PRC provides that

"Constitution of limitation fund may be applied for either before an action is brought or during the process of legal proceedings, or, at the latest, before the judgement of first instance is given."

Denmark

LLMC Convention

The answer to this question is no, but the MSA, Section 510, contains a series of provisions as to the relevant time-bars applying for the different types of maritime claims, which are subject to limitation.

The fund may be established, however, even if the relevant claim(s) is/are time-barred. The final legal decision whether to approve the separate claims will only be taken later by the Maritime and Commercial Court, see below.

Finland

LLMC Convention

There are no time limits within which the fund must be constituted, but there are, of course, time limits for bringing claims against the shipowner. These are usually short (one to two years; Chapter 19), and it may be added that by submitting their claims to the Court (*infra* under *(f)*), the creditors avoid the claims being time barred.

France

LLMC Convention

Our law does not provide for any time limit for the constitution of the fund.

Germany

CLC and LLMC Convention

No.

Greece

CLC

No time limit is provided for the constitution of the fund.

LLMC Convention

No time limit is provided for by the procedural rules of the CPML. As stated above, the limitation of liability (and therefore the constitution of the fund) may take place at any stage of the legal proceedings, until the completion of the compulsory enforcement procedure.

Ireland

LLMC Convention

No,[7] the limitation fund is not a condition. There is no specified time limit within which a fund must be constituted.

CLC

Yes, the court will order a payment into court of a specified amount if it is determined that the applicant is entitled to limit his liability.[8] This is no specified time limit.

HNS Convention

Yes, the court will order a payment into court of a specified amount before it will order the applicant's liability is limited.[9] there is no specified time limit.

Italy

CLC

Yes, it is. See response to Question 2.

Mexico

LLMC Convention

According to Mexican Law there is no time limit to constitute fund, but all the cases that have no specific time bar mentioned in our legislation, become time barred in 10 years. The limitation fund is a condition to invoke the limitation.

Netherlands

LLMC Convention

Under Dutch procedural law there are two separate time limits within which the fund must be constituted. The first relates to the creation of the fund, the second to the suspension of all pending court proceedings with regard to claims subject to limitation.

Firstly, if the Court grants the request to commence limitation proceedings, the Court will order the applicant to deposit the limitation fund at a date chosen by the court, but not later than one month after the Court's order. (Article 642*c* (2) CCP). After the applicant has deposited the fund, he must apply without delay to the Court and ask the Court for a declaration that the fund has been constituted. (Article 642*c* (6) CCP). If the

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7 Article 10 Convention on Limitation of Liability for Maritime Claims 1976.

8 Section 12(2) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

9 Section 14(2) Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (NB Not yet in force – awaiting a statutory instrument).

Court refuses to make the declaration that the fund has been constituted as ordered, the Court can give a new order to the applicant to deposit the limitation fund at a date chosen by the court, not later than one month after the new Court's order. (Article 642*c* (6) CCP). Failure by the applicant to meet this renewed order of the Court in time or completely, will result in the loss of the right to limitation of liability for the applicant (Article 642*c* (7) CCP).

Secondly and more generally, a debtor who has established one or more limitation funds with a Dutch Court, may ask any Court in The Netherlands to suspend any proceedings pending with regard to claims subject to limitation under the fund or funds established (Article 642*f* (1) CCP). Failure by the debtor to ask for such suspension of proceedings pending, results in the loss of the right to limitation of liability towards the creditor(s) in these proceedings (Article 642*f* (4) CCP).

New Zealand

LLMC Convention

The limitation fund is not a condition of invoking the limitation and there is no time limit within which the fund must be constituted.

Norway

LLMC Convention

The MC does not contain any provision setting out such a time limit. It follows from MC § 180 (above Question (a) that a fund may be established even when enforcement of a judgement for a maritime claim is requested. Any request for the establishment of a limitation fund will be dealt with by the court as expedient as possible.

Slovenia

CLC

The time limit within which the fund must be constituted is 15 days from the day the decision that permits the constitution of the limitation fund is issued

Sweden

LLMC Convention CLC

No time limit

Venezuela

CLC and LLMC Convention

In Venezuela the limitation fund is a condition in order to invoke the limitation and there is not a time limit within which the fund must be constituted, just as per article 53 of VMCL, the petition to constitute the fund has to be made before the Court's decree of execution of the shipowners´ assets.

QUESTION (e):

Which information the shipowner must provide to the Court (e.g. the list of the claimants).

Argentina

CLC

The shipowner will inform the Court on the grounds which the limitation fund has been calculated on [Section 562 (b) of the Navigation Act] and provide a list of the creditors including their domiciles and the amounts of the credits [Section 562 (c) of the Navigation Act].

Australia

CLC and LLMC Convention

1. Name and address of applicant.
2. Relationship of applicant with ship and name of port of registry of ship
3. Name and address of respondent.
4. Relationship of the respondent with the circumstances out of which the liability in respect of which the applicant claims to be entitled to limit liability arose.
5. Date of circumstances out of which the liability in respect of which the applicant claims to be entitled to limit liability arose.
6. Short factual description of the circumstances out of which the liability in respect of which the applicant claims to be entitled to limit liability arose.
7. Grounds for limiting liability.
8. Orders sought.

Belgium

LLMC Convention

1. Description of the event giving rise to the liability.
2. The details of the vessel, esp. tonnage upon which the limitation is to be calculated (to be proven by the tonnage certificate of the vessel).
3. The list of claimants (and possibly of the expected amount of the claims).
4. The manner of calculation of the limitation amount.

Chile

CLC

The information that the shipowner must provide to the Court is (arts. 1213 and 1214 C. Com.):

(i) The event from which the damages or losses arise, which will be subject to limitation.

(ii) The maximum amount of the fund that must be constituted.

(iii) The way in which the fund will be constituted either by depositing the sum, or by producing another acceptable guarantee to be qualified by the Court.

(iv) The list of the claimants known by the shipowners, with indication of their domiciles, nature of their claims and its amounts either final or provisional.

(v) The antecedents to calculate the limitation amount (GRT and the Certificate on the rate of exchange of the SDR).

China

CLC

In accordance with Article 104 of the SMPL of the PRC, the shipowner must provide these information to the Court, which should be stated in the written application: (1) the amount of the limitation fund to be constituted; (2) the reasons for constitution of the limitation fund; (3) the names, addresses and means of correspondence of the interested persons already known.

Denmark

CLC and LLMC Convention

The answer is set out in MSA, Section 237, which in translation provides:

"*The party which is presenting the claim (on basis of which the fund is to be established) is to provide the Court with the necessary information about the claim, inter alia, its basis and size and whether it is or has been subject to special proceedings*"

Finland

CLC and LLMC Convention

In the written application for the constitution of the limitation fund, the shipowner shall account for the circumstances and state the names and addresses of likely claimants against the fund (Chapter 12 § 3).

France

CLC and LLMC Convention

Pursuant to article 60 of the above decree of 1967, the shipowner must attach to his application to the Judge (the President of the Commercial Court) for the opening of the proceedings of constitution of the fund:

(i) A certified statement signed by the applicant listing the names of claimants that he is aware of, together with their address, the nature and the provisional amount of their claims.

(ii) The documents justifying the calculation of the limitation.

Germany

CLC and LLMC Convention

The shipowner has to name the incident, provide the court with the list of claimants, name the convention laid down, name and give proof of all the relevant details about his entities, name and give proof all the relevant details about the vessel.

Greece

CLC

The Statement of the Debtor to the Court for the limitation of liability (above, under b) must include the following information (Art. 3 of the Pollution Decree):

(a) The name, flag, port and number of registry, international call sign, net tonnage of the ship as well as the tonnage referred to in Article V para. 10 of the Convention.

(b) A description of the pollution incident and the known or potential damage caused thereby.

(c) Information on the possible claimants.

(d) The limitation amount as calculated in accordance with Article V paras. 1, 9, and 10 of the Convention.

(e) The appointment of a process agent. The process agent will receive any document and process document relevant to this procedure.

(f) The manner of constitution of the limitation fund (cash deposit or letter of guarantee).

Further, the following documents must be attached to the Statement of the Debtor for the limitation of liability (Art. 4 of the Pollution Decree):

(a) A copy of the ship's tonnage certificate

(b) Official evidence of the SDR/Euro rate.

(c) Evidence of constitution of the limitation fund after deduction of the expenses of the proceedings and fees of the Fund Administrator.

(d) Evidence of deposit of the expenses of the proceedings and the fees of the Fund Administrator.

LLMC Convention

The Statement of the Debtor to the Court for the limitation of liability should, among other, include the following information (arts. 90, 91 CPML and 6, 7 and 9 LLMC Convention):

(a) Whether the limitation is invoked with or without the constitution of a fund. Where a limitation fund is constituted, evidence of such constitution must be attached to the Statement.

(b) The names of claimants who are known to the Debtor at the time of the Statement, their residence and their claims.

(c) The occurrence out of which the claims have arisen.

(d) The tonnage of the ship (as well as any other element which may be useful to the calculation of the limitation amount).

(e) The appointment of a process agent for the Debtor.

Ireland

LLMC Convention

Ship owner must demonstrate that he is entitled to limit his liability in accordance with the LLMC.

CLC

Ship owner must demonstrate that he is entitled to limit his liability in accordance with CLC.[10]

HNS Convention

Ship owner must demonstrate that he is entitled to limit his liability under HNS.[11]

Italy

CLC

Article 621 of the Code of Navigation (CN) sets out a list of the documents that must be filed with the application. They are the following:

a) a declaration of the value of the ship;

b) the list of the proceeds of the voyage;

c) a copy of the inventory;

d) a list of the creditors with their address and the amount of the claim of each one;

e) a certificate setting out the hypothecs registered on the ship.

Since the documents listed under (a), (b), (c) and (e) are meaningless in connection with a limitation system based on the tonnage of the ship, they do not need to be produced. This has been held by the Tribunal of Messina in its judgement of 24 June 1985 on the *Patmos* case. The Tribunal held that it was required to produce the tonnage certificate and the calculation of the limitation amount. It did not mention the list of the claimants, but it is obvious that it must be produced.

Mexico

CLC and LLMC Convention

The Owners must provide to the Court:

– A valid Gross Registered Tonnage certificate;

– Official Exchange Rate between the Mexican Pesos or U. S. Dollars and the SDR;

– The details of the accident for which the fund is being constituted (and related documents);

The possible list of claimants and their addresses.

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[10] Section 12(2) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

[11] Section 14 (2) Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (NB Not yet in force – awaiting a statutory instrument).

Netherlands

CLC and LLMC Convention

Pursuant to Article 642*a* (2) CCP, the application in writing to the Court must include the following particulars:

a) the name of the vessel;

b) if it is a sea-going vessel only its nationality, and if it is sea-trawler also the place of registration;

c) the name and place of residence of the applicant;

d) the amount of the fund or funds as calculated by the applicant and the information necessary for calculation thereof;

e) the day and place of the incident that gave rise to the claims for which the applicant thinks he can limit his liability, as well as a description thereof;

f) the name and place of residence of persons known to the applicant against whom he thinks he can limit his liability and an estimate of the maximum amounts of each person's claim, and finally a proposal about how the applicant intends to constitute the limitation fund (cash deposit or a letter of undertaking).

New Zealand

CLC and LLMC Convention

1. Name and address of applicant.
2. Relationship of applicant with ship and name of port of registry of ship.
3. Name and address of respondent.
4. Relationship of the respondent with the circumstances out of which the liability in respect of which the applicant claims to be entitled to limit liability arose.
5. Date of circumstances out of which the liability in respect of which the applicant claims to be entitled to limit liability arose.
6. Short factual description of the circumstances out of which the liability in respect of which the applicant claims to be entitled to limit liability arose.
7. Grounds for limiting liability.
8. Orders sought.

Norway

CLC and LLMC Convention

A request for the establishment of a limitation fund shall explain reasons supporting the request and give the information relating to the ship which is necessary for the calculation of the amount of the fund (MC § 233). The request shall also set out available information as to any claimants likely to make a claim against the fund.

Slovenia

CLC

See answer (b)

Sweden

CLC and LLMC Convention

MC, Chapter 12 Section 3 - In the application, which shall be in writing, the applicant shall account for the circumstances and state the names and addresses of likely claimants against the fund.

Venezuela

CLC and LLMC Convention

The information that the shipowner must provide to the Court is as per art. 55 VMCL:

(i) The event from which the damages or losses arise, which will be subject to limitation.

(ii) The maximum amount of the fund that must be constituted calculated according to the VMCL.

(iii) The list of the claimants known by the shipowners, with indication of their domiciles, nature of their claims and its amounts either final or provisional.

(iv) The antecedents to calculate the limitation amount .

QUESTION (f):

Whether notice must be given to the claimants of the commencement of the limitation proceedings and which directions are set out as to the manner in which they must file their claims in such proceedings.

Argentina

CLC

The court appointed receiver will put claimants on notice of the commencement of limitation proceedings by way of registered letters (Section 566 of the Navigation Act). The commencement of the limitation proceedings must also be published in the Official Gazette and in the most widely read local newspaper (Section 567 of the Navigation Act). Claimants will file with the receiver the documentation supporting their credits [Sections 565 (c) and 566 of the Navigation Act].

Australia

CLC and LLMC Convention

Yes; directions as to time limits for entering an appearance and/or filing a defence are notified

Belgium

LLMC Convention

By whom and how notice of the proceedings must be given to the claimants

Notice must be given by the Liquidator of the limitation fund appointed by the first Order of the President of the Court. He will inform in writing the known claimants of the constitution of the fund and will invite them to introduce their claim.

He will also in conformity with the second Order – confirming that the fund is in place – publish the constitution of the limitation fund in the State's Gazette and in the newspapers chosen by the President.

Information and directions

Can be found in the second Order of the President which is published.

The claimant wishing to introduce a claim in the fund must follow the procedural rules in respect of the filing of claims in a bankruptcy.

Chile

CLC

Yes, notice must be given to the claimants of the commencement of the limitation proceeding. First of all, once the Court has declared that the fund has been duly constituted, the Trustee appointed by the Court will notify the claimants included in the list, by registered letter, informing them about the fund constitution, the name of the person limiting liability, name of the ship; a brief of facts; the amount of claim and the time limit to verify or present the claim.

In addition, the Trustee must publish an abstract of the resolution issued by the Court in the Gazette and in a newspaper of circulation in the city of the Court, informing

that there is a time limit of 30 running days from the publication to verify the credits or claims attaching the supporting documents. These publications permit other claimants, not included in the list, to be aware about the Fund Constitution and exert the same rights of those included in the list.

China

CLC

Yes, Article 105 of the SMPL of the PRC provides that the maritime court which has accepted an application for constitution of a limitation fund shall, within 7 days of this acceptance, give a notice to all the interested persons already known and issue an announcement of the same in the newspapers or other news media. Such notice and announcement shall contain: (1) name of the applicant; (2) facts and reasons for application; (3) particulars for constitution of the limitation fund for maritime claims; (4) particulars necessary in registration of claims; and (5)other matters which need to be announced.

Denmark

CLC and LLMC Convention

The MSA does not require that the Maritime and Commercial Court of Copenhagen addresses a special notice to the (other) known creditors, apart from the general notice set out in the official gazette, see above under item (c). In practice, the Court will, however, do so, especially if the individual creditors are known to be represented by Danish lawyers.

Finland

CLC and LLMC Convention

When a limitation fund has been constituted, the Court shall announce this immediately. In the announcement, which should include relevant information about the fund (e.g., the name of the person constituting the fund and that of the vessel), all creditors shall be advised to submit their claims to the Court within a certain period (submission period), which shall not be less than two months. The time for submissions is dependent upon the circumstances of the case: longer time is needed when an incident has occurred abroad with many creditors, than in an accident in Finland with few creditors.

Notice of the following provisions shall also be included in the announcement:

Chapter 9 § 7, third paragraph, which reads: *"After a limitation fund has been constituted in Finland, suit regarding a claim of a kind that is subject to limitation may be brought only in a limitation action. The same applies to any suit concerning the right of the person constituting the fund to limit his liability and concerning distribution of the fund."*

Chapter 12 § 8, which reads: *"For a claim which has not been notified to the Court before the handling of the fund distribution has been terminated in the court of first instance, payment can be made only according to § 14"* (second paragraph of this provision reads: *"The Court may reserve a certain amount for covering claims which have not been submitted before end of the distribution of the fund in the court of first instance. Such amount shall be distributed when all claims submitted have been considered and it can be assumed that no further claims will be submitted"*).

Chapter 12 § 15, which reads: *"A final decision in the limitation proceeding concerning liability, the right to limitation of liability, the amount of liability, claims submitted and the distribution of the fund shall be binding upon every one who can maintain claims against the fund, regardless whether they have submitted their claims or not."*

The announcement shall be published in the Finnish Official Journal ("Virallinen Lehti") and, if the Court considers it necessary, in a local newspaper. If there are special reasons, the announcement shall also be published abroad. Such reasons could be, e.g., an oil pollution incident with many creditors abroad.

The person constituting the fund and all known creditors shall be informed of the announcement by special message (Chapter 12 § 5).

According to Chapter 12 § 7, a claimant submitting his claim shall state its amount and basis. If judgment has been given regarding the claim or legal proceedings about it are pending, this shall be stated. Such a judgment, which is recognized and can be enforced in Finland, is taken into account when the fund is distributed. And knowledge of pending proceedings are important for the other creditors in order to give them a possibility to intervene, if needed.

France

CLC and LLMC Convention

As indicated above in our answer to question (b), no limitation proceedings, as such, exist under French law.

The party who wishes to obtain the benefit of a limitation of liability may apply ex-parte to the President of the competent court for the opening of the proceedings of the constitution of the fund.

Therefore the claimants are not aware of the application filed with the President of that court nor of the order, constituting the fund, when it is rendered.

Claimants are in fact informed of the constitution of the fund by the liquidator of the fund appointed by the President of the court at the opening of the proceeding.

Pursuant to article 71 of the decree of 1967, the liquidator of the fund informs the claimants whose names are attached to the application for the constitution of the fund (by letter with acknowledgement receipt requested) and invite them to file their claim into his hands. The same invitation to file their claims into his hands is also made for the benefit of unknown claimants, by way of publication in specialized news-papers.

Germany

CLC and LLMC Convention

Public notice is given at least once in the official journal, the named claimants will be informed by the court individually. In the official journal and the individual notices the proceedings are explained.

Greece

CLC

The Fund Administrator issues, without delay, a Notice to Claimants to appear before him and announce their claims against the limitation fund within the prescribed period. The Notice to Claimants is published in two daily newspapers in the capital city of Athens, Greece, and in one daily newspaper of the place where the oil pollution damage was mainly sustained. The Notice to Claimants is also posted in the municipality of the place where the oil pollution damage was mainly sustained (Article 11 paras. 1 and 3 of the Pollution Decree).

The claimants announce their claims against the limitation fund either by filing a written Notice of Claim with the Fund Administrator or even orally before the Secretary of the Court. the evidence of the claim must be submitted at this stage (Article 14 of the Pollution Decree).

The Notice of Claim must contain the amount and basis of the claim. If the amount of the claim is not yet fixed at the time that the Notice of Claim is filed, the Notice may contain only the basis of claim, together with an estimate of the amount that the claim is

expected to reach. The claim amount may be fixed until the time that the Fund Administrator draws the List of Claims (Article 15 of the Pollution Decree).

LLMC Convention

The Secretary of the Single-Member First Instance Court before which legal proceedings have been instituted, draws a Report to the effect that a Statement for the limitation of liability has been filed by the Debtor. That Report is notified to the claimants who were included by the Debtor in his Statement, to the ship's mortgagees and to the ship's Registry (Art. 90 CPML).The Court Order that assigns the limitation proceedings to a Reporting Judge and appoints a Fund Administrator is notified by the Fund Administrator to the claimants who were included by the Debtor in his Statement for the limitation of liability. The Fund Administrator further notifies the Hellenic Shipping Chamber and publishes a summary of the Court Order in two daily newspapers with wide circulation in the capital city of Athens, Greece, together with a Notice to Claimants (Art. 93 CPML).

Ireland

LLMC Convention

There is no requirement to give notice but in practice the Court would require that all known interested parties would be given notice.

CLC

There is no requirement to give notice but in practice the Court would require that all known interested parties would be given notice.

HNS Convention

There is no requirement to give notice but in practice the Court would require that all known interested parties would be given notice.

Italy

CLC

If the Tribunal allows the application of the owner it issues an enforceable judgment. The judgment is communicated by registered letter to the claimants. The judgment fixes a time limit by which the claimants must file their claims in the proceedings.

Mexico

CLC and LLMC Convention

The claimants must receive notice by the Court of the commencement of the limitation proceedings. Each claimant is free to proceed as they will against Owners, not only in respect of the fund but also in connection to a lien they may have.

Netherlands

CLC and LLMC Convention

Firstly, the Court Clerk's Office shall give notice to the known creditors listed in the application to commence limitation proceedings and at the discretion of the Court also by way of an announcement in one or more newspapers chosen by the Court, of the date and time of hearing, at which the Court will consider and deal with the application to commence limitation proceedings (Article 642*a* (4) CCP).

Secondly, the administrator shall give notice by registered mail (and at the discretion of the Court also by way of an announcement in one or more Newspapers chosen by the Court), to both the debtor(s) and his known creditor(s) of:

– the date when claims against the debtor(s), as well as challenges to the right to limitation of liability of one or more debtor(s), must be filed with the administrator of the limitation fund(s) (Article 642*i* and Article 642*g* (1) CCP); and

– the date(s), time and place of the Court hearing(s) when and where the Court will proceed with the verification of all claims against the debtor(s) and the assessment of any challenges to the right to limitation of the debtor(s) (Article 642*i* and Article 642*g* (2) CCP).

Thirdly, the administrator shall give written notice to the debtor(s) and all known creditors for each fund of the list of provisionally acknowledged claims and of the (separate) list of provisionally disputed claims, and will include also a further invitation to the verification hearing (Article 642*m* and Article 642*l* (5) CCP).

Fourthly, the administrator shall give notice by registered mail (and at the discretion of the Court also by way of an announcement in one or more newspapers chosen by the Court), to both the debtor(s) and his known creditor(s) of the statement of division of the fund as approved by the Court (Article 642*u* (2) and Article 642*i* CCP).

New Zealand

CLC and LLMC Convention

Yes; directions as to time limits for entering an appearance and/or filing a defence are notified

Norway

CLC and LLMC Convention

There is no requirement that possible claimants be informed before the court makes its decision on the establishment of a limitation fund.

As soon as the court has made its decision and the amount or the security is submitted to the court, the court shall issue a public announcement that the fund has been established, and invite all persons who will make a claim against the fund to submit their claims to the court within a time period of 2 months (MC § 235). In addition, claimants known to the court shall be notified.

The announcement shall make known that

– claims subject to limitation may not be brought before any other Norwegian court (MC § 177);

– claims not received by the court before the court has decided that it shall proceed with the judgement by which the limitation fund is distributed among the established claim, may be excluded wholly or partly at the distribution of the fund (MC § 238);

– that any final judgement on the right to limitation, the amount of the fund, the claims made against the fund, and the distribution of the fund will have legal effect for all claimants with claims which may be made against the fund, whether or not the court has received notice of the claims (MC § 245).

Slovenia

CLC

The notice of the commencement of the limitation proceedings must be served to all claimants. The claimants must notify their claims to the court within 90 days from the day the court decision on constituting the limitation fund is published. The claimants are also warned by the court on the consequences of the omission of their notification.

Sweden

CLC and LLMC Convention

MC, Chapter 12 Section 5 - When a limitation fund has been constituted, the Court shall announce this immediately. In the announcement, all creditors shall be advised to submit their claims to the Court within a certain period which may not be less than two months. The person constituting the fund and all known creditors shall be informed of the announcement by special message.

Venezuela

CLC

Yes, notice must be given to the known claimants referred in the petition of the commencement of the limitation proceeding. Once the Court has declared that the fund has been duly constituted, the same Court will notify such known claimants included in the list provided by the petitioner, indicating:

(i) the name and domicile of the registered shipowner or of the petitioner if he is not the registered shipowner asking for the constitution of the fund, mentioned his qualification to ask for that benefit;

(ii) the vessel's name and its place of registration;

(iii) the event from which the damages or losses arise out

(iv) the amount of the credits for which the fund has been constituted, according with the petitioner;

(v) the indication of the term that has to be given to the creditors to verify his credit.

In addition, the Court must publish its resolution admitting the constitution of the fund in a newspaper of Venezuelan national circulation, mentioning the name of the creditors, and giving them a term of 30 running days to verify their credits and to file its supporting documents.

QUESTION (g):

Which is the time limit, if any, within which the claims must be filed and which are the consequences of the failure to file the claims within such time limit.

Argentina

CLC

The time limit for filing documentary evidence of the claims will be fixed by the Court [between 20 and 60 days according to Section 565 (c) of the Navigation Act]. There are no specific provisions regarding the consequences of the failure to file the claims within the time limit established by the Court. Although it is a debatable issue, the Court may decide that such failure may imply the loosing of the right to participate in the fund distribution.

Australia

CLC and LLMC Convention

Depends upon the particular court in which proceedings are commenced but usually 28 days. Failure to file within time permits judgement by default to be given.

Belgium

LLMC Convention

Time limit

There is uncertainty because article 48 of the Belgian Maritime Code refers to the old law on bankruptcy as far as the proceedings are concerned. According to this old law claims can be entered until distribution whereas under the new law on bankruptcy claims should be entered within three years after opening of the bankruptcy. It is generally believed though that the old rule is still applicable due to an oversight of the legislator and that claimants in a limitation fund can enter their claims until distribution.

Consequences of non-compliance

One can of course no longer claim after distribution. It is generally believed that a claimant has no claim against other assets of the shipowner in Belgium and no right of arresting his vessels in Belgian waters.

Chile

CLC

As indicated above, the time limit is of 30 days from the date of the last publication (either the Gazette or the newspaper).

Failure to file the claims within such time limit has the following consequences:

(i) the creditor or claimant loses his right to challenge the limitation on the grounds that the requirements to limit do not exist;

(ii) may lose the right to object the amount of the fund;

(iii) if the fund has been paid and distributed amongst the claimants, he will lose the right to be included in the list of the verified credits. However, if the funds have not been paid yet, he may ask the Trustee to be included, although he may have verified the credit in the proceeding after the time limit.

China

CLC

Under Chinese law, except the time limit for suit regulated in other substantive laws, such as General Principles of the Civil Law of the People's Republic of China and Maritime Code of the People's Republic of China, there are no other provisions on the time limit for the claimants to file their claims in procedure laws. But as for this question, there is another kind of time limit under Chinese law, that is time limit for registration of claims. Article 112 of the SMPL of the PRC provides:

"After the maritime court's announcement of acceptance of the application to constitute a limitation fund for maritime claims, the creditors shall, within the time limit announced, apply for registration of their claims relevant to the maritime accident that occurred at a particular scene. The creditors who fail to register their claims before expiry of the time limit announced shall be deemed to have abandoned their rights to debt."

There are no express provisions on how long the abovementioned "time limit announced" is, but in practice, this time limit should not less than 1 month.

Denmark

CLC and LLMC Convention

According to MSA, Section 235, the Maritime and Commercial Court will fix a date on which the claims must be presented, which date must not be less than two months ahead. The claim will, however, not be time-barred, if this date is not being met. But when the Court renders its final judgment distributing the fund, this judgment will have such effect vis-à-vis the creditors which have not raised a claim in the fund. Such claim will consequently be deemed null and void, see MSA, Section 245.

Finland

CLC and LLMC Convention

For a claim which has not been submitted before the handling of the fund distribution has been terminated in the court of first instance, payment can be made only according to Chapter 12 § 14, second paragraph (cited supra), cf Chapter 12 § 8 and § 15. Thus, if the Court has not reserved a certain amount for covering a claim which has not been submitted before end of the distribution of the fund, the claimant has no right against the fund.

France

CLC and LLMC Convention

Pursuant to article 72 of the decree of 1967 the time limit within which such claims must be filed is 30 days as of receipt of the liquidator's letter or the date of the publication

for the unknown creditors. The time limit can be extended to 40 and 50 days, depending on the domicile of the claimants.

These time limits make no sense, as they are too short and, in practice, they are not complied with.

In case the above delay is not respected, pursuant to articles 72 and 73 of the decree, the amounts of claimants' claims, as estimated by the applicant, are deemed to be accepted by claimants. Like the above delays, this provision is not applied in practice.

Germany

CLC and LLMC Convention

The claims must be established in a time-frame between at least two months (all the claimants are nationals) and at least months (claimants are internationals). The time frame depends on how severe the incident is and who the claimants are. Claims may be filed until the fund is distributed. Cost responsibility with the claimant.

Greece

CLC

The Notice to Claimants which is issued by the Fund Administrator (above, under f) contains the time limit within which the claimants must file their claims against the limitation fund. The time limit may not be shorter than fifteen days or longer than six months starting from the date of circulation of the newspaper of the capital city of Athens, Greece, where the Notice to Claimants of the Fund Administrator was last published (Article 11 paras.2 and 4 of the Pollution Decree).

The Reporting Judge may, until the verification of claims is complete, allow a claimant to file his Notice of Claim after the lapse of the time limit specified above, if the Claimant was unaware of the Notice to Claimants or did not observe the time limit for any other reason which was not due to his own fault; the permission is granted through the procedure of provisional measures (Article 12 of the Pollution Decree).

LLMC Convention

The time limit is three (3) months from the date of publication by the Fund administrator of the Notice to Claimants (Article 93 CPML). Although the CPML does not contain provisions regulating the consequences of the failure to file the claims within the prescribed time limit, it is accepted that such failure results to the extinction of the claimant's right to participate to the distribution of the fund.

Ireland

LLMC Convention

The applicable time limit will depend on the type of claim (e.g. a claim for loss of life / personal injury is 2 years)[12]. Failure to file a claim within the requisite time period would mean that the action is statute barred.

CLC

Application must be made within three years of the date of the damage and not later than six years of the date of the incident which occasioned the damage.[13] Failure to file a claim within this period will mean that the action is statute barred.

HNS Convention

Same as LLMC above.

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12 Section 7 Civil Liability and Courts Act 2004.

13 Section 12(5) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

Italy

CLC

The time limit is thirty days (sixty days if the claimants are resident abroad) running from the date the judgement mentioned under (f) is published. Article 638 CN provides that the claimants whose claims are not filed within the time limit assigned by the Tribunal in its judgment may only share the surplus of the limitation fund after its distribution amongst the claimants who have timely filed their claims.

Mexico

CLC and LLMC Convention

The Court will set the time limit, running from the date of receipt of the order, within which claimants must submit their claims accompanied by the relevant documents.

Netherlands

CLC and LLMC Convention

In principle claims must be filed with the administrator no later than the date set by the court pursuant to Article 642*g* (1) CCP. All creditors are obliged to file their claims, even if they contest the right to limitation of the applicant and also if it is unclear whether their claim is subject to limitation under the fund created (Article 642*k* CCP). Creditors who challenge the right of limitation or who doubt that their claim is subject to limitation are obliged to present their reasons for doing so in a separate statement also to be submitted to the liquidator (Article 642*l* (1) and (7) CCP). If a creditor who was properly invited to file his claim, fails to do so altogether, then ultimately – at the end of the limitation proceedings, when the statement of division of the fund as drawn up by the Court enters into legal force – the claim will become null and void (Article 642*w* CCP).

However, a creditor who failed to file his claim in time, may apply to the Court even after the above date has lapsed, to allow their claim to be admitted to the verification process. The Court in its discretion will decide whether or not to allow the admission of the claim (Art. 642*o* (1) CCP). If the creditor is domiciled abroad and because of that was unable to file its claim any earlier, the Court must admit the claim to the verification process (Article 642*o* (2) CCP). If there is disagreement between the parties involved in the verification process about whether the creditor domiciled abroad was indeed unable to file the claim earlier, the Court shall decide after hearing the other parties (Article 642o (3) CCP).

New Zealand

CLC and LLMC Convention

Depends upon the particular court in which proceedings are commenced but usually 28 days. Failure to file within time permits judgement by default to be given.

Norway

CLC and LLMC Convention

See answer to Question (f). A claimant must, in order to be fully entitled to participate in the distribution of the fund, have submitted his claim to the court before the court has terminated any hearings and decided to proceed with the judgement on the distribution of the fund among the established claims (MC § 238).

Slovenia

CLC

See answer (f)

Sweden

CLC and LLMC Convention

The creditors must file their claims within the period of time set out by the Court (MC, Chapter 12 Section 5 paragraph 1). As regards claims that have not been notified to the Court before the handling of the fund distribution has been terminated in the District Court (MC, Chapter 12 Section 8), payment can be made only if the Court has reserved a certain amount for claims that have not been submitted before the end of the distribution of the fund before the District Court (MC, Chapter 12 Section 14 paragraph 2).

Venezuela

CLC

The time limit, within which the claims must be filed is 30 days, counting from the date in which the publication was filed at the Court limitation proceeding.

The VMCL, does not establish any consequences of the failure to file the claims within such time limit. However, we are of the opinion that in such a case by analogy with article 1051 of the Venezuelan Commerce Code related to general bankruptcy, the limitation proceeding shall not be suspended for the lack of action of any creditor, but if he appears before the final qualification of the other creditors he may be included in the provisional sums that will set the Court.

QUESTION (h):

In which manner the claims of the claimants must be assessed and whether such assessment may be challenged and how.

Argentina

CLC

A proposal for the fund distribution must be submitted to the Court by the receiver (Section 517 of the Navigation Act). If the proposal is challenged the Court must issue a final decision (Sections 572, 556 and 557 of the Navigation Act.).

Australia

CLC and LLMC Convention

By trial before a single judge

Belgium

LLMC Convention

The Liquidator appointed by the President draws up a report to the relevant section of the Commercial Court (in Antwerp this is the section that deals with bankruptcies). The claimants and the petitioner will in submissions give their comments to the draft report of the Liquidator who has of course the right to file submissions also. The Court will decide.

Chile

CLC

Claims are assessed by each claimant in a draft attached to the writ whereby he verifies his claim together with interests thereon, enclosing the supporting antecedents or documents. From the moment each claim has been verified in the proceeding, and up to 15 days after the notification of the resolution declaring that the verification period has concluded, through publication in the Gazette, other claimants, the Trustee or the person who constituted the fund, may challenge each claim either on its merits or on its calculation / assessment, presenting a writ in the proceeding.

China

CLC

According to Article 115 and Article 116 of the SMPL of the PRC, the maritime court would assess the claims of the claimants in different manner under different circumstances:

(1) If the creditor/claimant presents a judgement, a written order, a conciliation statement, an arbitral award or a notarized document to the court to evidence their claims, the court would examine these documents to ascertain whether these documents are true and lawful. If the court firmly believes that these documents are true and lawful, it shall make an order to confirm the creditor's rights to debt.

(2) Where the creditor wishes to provide other maritime claim evidence, he shall, after having registered his claims, bring an action to confirm his rights before the maritime court where the claims are registered. The judgements and written orders made by the maritime court to confirm the rights are finally binding the parties , they are not allowed to bring an appeal against them.

(3) If the creditor provides other maritime claim evidence than those documents mentioned in (1), and an arbitration agreement has been concluded between the parties, the maritime court should ask the creditor to apply for arbitration.

Denmark

CLC and LLMC Convention

The party who has initiated the constitution of the fund is to see to it that all the creditors who have submitted a claim to the Court are invited to a mutual court meeting.

If any of the submitted claims are contested by other claimants, the Court will ask the disputing parties to provide written submissions to the Court and will fix a hearing, where the relevant matter(s) will be argued. the Court will hereafter render its judgment, if so requested, which may be appealed to the Supreme Court of Denmark.

This is confirmed by MSA, Section 242, which provides that:

"*Any objection against the right to limit liability, the size of the fund or a submitted claim shall be determined by the Maritime and Commercial Court of Copenhagen pursuant to the provisions of the Administration of Justice Act*".

Finland

CLC and LLMC Convention

As soon as the submission period mentioned above (under *(f)*) has elapsed, the Court shall hold a fund meeting. To the meeting, the Court shall summon the administrator, the person having constituted the fund, the person having brought the limitation proceeding into court and the claimants. If the right of any other person is affected, such person shall also be summoned. At the fund meeting there shall be taken up matters concerning liability and its limitation, the amount of the limit of liability and the claims that have been submitted.

In more complicated cases and/or when there are many creditors an administrator of the fund is usually appointed by the Court (cf. Chapter 12 § 6). Prior to the fund meeting the administrator shall examine the submitted claims and, as far as possible, draw up a proposal for the distribution of the fund. The proposal shall be sent to those who have been summoned to the meeting. If no administrator has been appointed, the Court shall take these measures.

If no objection to the proposal, duly amended after the fund meeting, remains after the end of the meeting, the proposal shall form the basis for the distribution of the fund. However, if necessary, the fund meeting may be continued later.

If any objection remains at the end of the fund meeting, the Court shall set a certain period within which the objecting person shall request the Court's decision of the

dispute. If such request has not been made in time, the objection shall be considered to have lapsed. If it is maintained, the Court shall try the dispute as soon as possible (Chapter 12 § 11).

There is a possibility to distribute and dissolve the fund without the decision of a court under particular circumstances, Chapter 12 § 9.

France

CLC and LLMC Convention

Pursuant to article 74 of the decree, the liquidator verifies the claimants' claims in the presence of the applicant. When the existence or the amount of a claim is challenged by the liquidator or by the applicant, the liquidator informs the claimant accordingly and invite him to comment within a delay of 30 days (which is, in practice, not respected).

In most cases, however, the assessment of claimants' claims is made in the framework of the proceedings on the merits, on liability and quantum.

In order to avoid a duplication of assessment of claims, the liquidator may stay the verification of the claims until a final judgement of the court is rendered.

The liquidator is bound by this judgement.

When the stage of verifications of the claims by the liquidator is terminated, the liquidator presents to the Judge of the control of the constitution fund proceeding (Juge commissaire), his proposals for the admission or rejection of all claims filed into his hands.

However, it will not be before a very long time since:

i) the liquidator must wait until the end of the proceedings on the merits, and

ii) there may be several proceedings, in different countries, resulting from the event which has given rise to the constitution of the fund.

Pursuant to article 75 of the decree the liquidator's proposal are thereafter fixed by the judge of the control who issues a "statement of the claims" ("Etat des créances").

The Registrar of the court thereafter sends to the claimants pursuant to article 77 of the decree this "Statement" and the claimants have a delay of 30 days (increased to 40 and 50 days depending on their domicile) within which they are allowed to dispute the claims (other than their own claim) which have been admitted.

The applicant is allowed to dispute the admitted claims in the same conditions.

Those disputes are thereafter heard, not by the President who has rendered the order constituting the fund, but by the court itself, on the basis of a report from the Judge of the control of the constitution of fund proceeding.

The judgements, rendered in those conditions by the Commercial Court, may be subject to an appeal proceeding.

Germany

CLC and LLMC Convention

The claims are reviewed in every regard by the court.

Greece

CLC

The assessment of the claims is made by the Fund Administrator under the supervision of the Reporting Judge; the claimants are convoked to be present during the control of their claims (Art. 18 of the Pollution Decree). The Fund Administrator assesses the truth and validity of the claims on the basis of the evidence of the claim submitted by the claimants (Art. 14 of the Pollution Decree). Following the above assessment, the Fund Administrator issues and files with the Secretary of the Court a list of the claims that the Fund Administrator admits as valid and true (*the List of Claims*). (Article 20 of the Pollution Decree) The Fund Administrator notifies the Claimants and

the Debtor accordingly. The Claimants and the Debtor may file before the Court their Objections against the List of Claims within a time limit of thirty (30) days from the filing of the List of Claims with the Secretary of the Court. (Article 20 of the Pollution Decree).

The final Distribution Plan is drawn by the Fund Administrator after the Court issues an irrevocable judgment on every Objection that was filed (Art. 22 of the Pollution Decree).

LLMC Convention

Following the lapse of the three (3) month time limit within which the Claimants file their Notices of Claim, the Fund Administrator summons to a Meeting of Creditors the Debtor and the claimants who have made themselves known and serves on them, at least ten days in advance, the List of the Claims which he has drawn up (Art. 96 CPML). The assessment of the claims is made by the Meeting of Creditors; the decisions of this Meeting are valid, irrespective of the extent of the claims represented (Art. 97 CPML). The assessment may be challenged by an objection from the Debtor or the claimants who were present at the Meeting; such objections shall be adjudicated in proceedings brought at the instance of the Fund Administrator, according to the procedure provided for in arts 739 et sqq. of the Code of Civil Procedure (Article 99 CPML).

Ireland

LLMC Convention

Irish law sets out Article 12 of the LLMC which provides that, subject to Articles 6(1), 6(2), 6(3) and 7 of the LLMC, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

CLC

The court determines the amount (if any) due to any person making a claim and the fund is then distributed in proportion to that determination.[14]

HNS Convention

The court will determine who is entitled to receive compensation and the fund is then distributed in proportion to the amounts of the established claims.[15]

Italy

CLC

The claims of the claimants must be assessed by a judge appointed by the Tribunal in the judgment mentioned under (f) (hereinafter: "the appointed judge"). Within the date set out in such a judgment the appointed judge must prepare a report setting out all the liabilities resulting from the claims that have been filed. Such report may be challenged by the owner or any claimant. This is done by summoning all persons interested to appear before the Court at a hearing already fixed in the above mentioned judgment. At such a hearing the objections to the report are discussed and then the Tribunal issues its decision thereon.

Mexico

CLC and LLMC Convention

The claims must be assessed in the manner set for each type of claim under a normal sue proceeding. Also, they must be challenged following the remedies set in the Procedures Code.

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[14] Section 12(2) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

[15] Section 14(2) Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (NB Not yet in force – awaiting a statutory instrument).

Netherlands

CLC and LLMC Convention

The first stage in the assessment of claims takes place after the filing of claims with the administrator. The administrator provisionally verifies the claims filed by reference to information received from the applicant and from other creditors. The administrator is also entitled to demand disclosure of missing documents and can require the inspection of original documents as well as the administration of the creditor (Article 642l (4) CCP).

The provisional verification by the administrator results for each individual fund in two lists. On the hand a list of provisionally acknowledged claims, on the other hand a list of provisionally contested claims (Article 642*l* (5) CCP). The lists shall include reference to any statements received contesting the request made by the applicant seeking limitation and also the supporting grounds (Article 642*l* (7) CCP).

The administrator shall make these lists available for (free of charge) inspection by the parties involved in the limitation proceedings by depositing the lists at the Clerk's Office at the Court building no later than 21 days before the first verification hearing (Article 642l (6) CCP). The administrator shall notify all known creditors and debtors of the deposition of the lists at the Court Clerk's office (Article 642*m* CCP).

The second stage in the assessment of claims takes place at the verification hearing(s) of the Court (Article 642*n* CCP). At these hearings, each party (whether creditor or debtor) may dispute any or all of the filed claims by the (other) creditors (Article 642*p* (1) CCP. If is a claim is not contested by any of the parties present at the verification hearing, it will be established by the Court for the full claim-amount (Article 642*p* (2) CCP), which will be noted down in the official record of that verification hearing and in the lists drawn up by the administrator (Article 642*p* (3) CCP). If at the verification hearing the applicant's right to limitation or any claim is contested by parties involved in the limitation proceedings, the Court shall try to assist the parties in finding an amicable settlement.

Renvooi-proceedings are the third and final stage in the process of assessment of claims in Dutch limitation proceedings. If it proves impossible for the Court to unite the parties, then the Court shall identify the issues that keep (some of) the parties divided and refer the(se) dispute(s) to one or more Court hearings to be resolved in renvooi-proceedings (Article 642*q* (1) CCP).

In the Dutch law of civil procedure, renvooi-proceedings are a regular kind of court proceedings between one or more claimant(s) against one or more defendant(s). The only special aspect is that the proceedings do not start with a writ of summons, but with the referral decision of the dispute by the Court. Usually after two rounds of written statements (and possibly a hearing in the presence of the parties and/or oral pleadings) the court will give its (interim or final) judgment. In case of an interim judgment, the Court will order a party or the parties to give (additional) evidence in support of its allegations. After that, another round of written statements will follow (and possibly oral pleadings) followed by another (interim or already the final) judgment.

Decisions in renvooi-proceedings are subject to appeal within four weeks from the day of the judgment. Appeal decisions in renvooi are also subject to final appeal in cassation to the Hoge Raad, the Dutch Supreme Court (Article 642y (2) CCP). After all disputes have been resolved either in renvooi (and the renvooi-decision has entered into legal force) or by amicable agreement between the parties, the verification-hearing will be resumed and a statement of division will be drawn up by the administrator of the limitation fund(s) (Article 642*s* (1) CCP).

New Zealand

CLC and LLMC Convention

By trial before a single judge

Norway

CLC and LLMC Convention

After the fund has been established in Norway, the rest of the limitation procedure is governed by the rules on *limitation actions.* Such action may be initiated at the same court by the person having established the fund or his liability insurer, or by any claimant having a claim which may be made against the fund and has a right to participate in the distribution of the fund. Other persons may not initiate the limitation action (MC §§ 177 and 195).

In a limitation action the court shall decide all questions as to the liability relating to the particular claims made against the fund, the right to limit liability, the amount of the limit(s) of liability, and the distribution of the fund.

The limitation action (Question (f) above) is initiated by the person liable, his insurer or a claimant by a writ to the court where the limitation fund has been established. This is an *en bloc* writ addressed to all claimants who are entitled to make a claim against the fund, and any person liable who may benefit from the establishment of the fund may be requested to join in the action (MC § 240).

When a limitation action has been initiated the court shall issue an order requesting all parties to the action to attend a "Fund meeting" to deal with a report setting out proposals to the solution of all relevant questions concerning liability and limitation of liability (MC § 241). Any issue which is contested by any party during the "Fund meeting", is to be argued separately before the court by the particular parties involved in the dispute, and then decided by the court (MC § 242). Accordingly, if the person liable contests his liability for a particular claim, the disputed claim will separately decide by the court.

When all disputed issues are solved, the court shall by final judgement distribute the fund among the established claims (MC § 244), even if the person liable do not have the right to limit liability.

Slovenia

CLC

See answer (f);

The claimants, who have their claims in foreign currency, must notify them in Slovenian tolars.

The claimants can not challenge the claims of the other claimants under the reason that the claim arose under shipowners wilful misconduct.

If the shipowner challenge the existence or the amount of the claim, the court requests the claimant to prove the existence/the amount of the claim (in the separate proceeding). The claim can not be challenged if it is final.

Sweden

CLC and LLMC Convention

MC, Chapter 12 Section 11 - The Court or an appointed administrator shall examine the claims before the fund meeting. The assessment can be challenged by way of an objection to the distribution proposal. If there remain any objections at the end of the fund meeting, the Court shall set out a certain period of time within which the objecting party shall state whether he maintains his objection and requests that the dispute be referred to and decided by the Court.

Venezuela

CLC

Claims of the claimants have to be assessed by the solicitor (the person limiting liability). Such assessment may be challenged within 10 days after conclusion of the 30 days above mentioned by any of the claimant either on its merits or on its calculation / assessment. Also, the claimants may challenge the amount of the fund constituted. (Article 64 VMCL).

QUESTION (i):

To which extent is the subrogation of any person who has paid any amount of compensation in respect of claims subject to limitation permitted under your national law?

Argentina

CLC

The third party that paid any amount of compensation in respect of credits subject to limitation will assume the position of the original creditor. Under Argentine law subrogation is accepted up to the amount paid without restrictions (Sections 767/ 772 of the Civil Code).

Australia

CLC and LLMC Convention

Subrogation is usually permitted.

Belgium

LLMC Convention

Subrogation is admitted as provided for in the LLMC Convention.

Chile

CLC

If before the distribution of the fund the person liable has settled a claim against it, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under the law.

Regarding other third parties such as the shipowner's P&I Club who has paid a claim against the owner, will also acquire by subrogation the same right, assuming that the person so compensated would have been entitled to claim under the law.

China

CLC

Under Chinese law, there are no express provisions regarding this issue. However, in our view, the Chinese maritime courts will recognize the subrogation up to the amount of compensation that the person has paid.

Denmark

CLC and LLMC Convention

The basic rule is that the party who compensates a claimant also subrogates de lege into the claimant's rights, but shall obviously obtain no better rights than the claimant. So, if the claimant's claim is subject to limitation, this also applies to the subrogating party. MSA, Section 176(3), provides that:

"*The party who has fully or party honoured a claim, before the limitation fund is distributed, subrogates into the claimant's right to obtain cover in proportion to the amount honoured*".

Finland

CLC and LLMC Convention

According to the FMC Chapter 9 § 6, third paragraph, "If the vessel operator or any other person has wholly or partly paid a claim before the limitation amount has been distributed, he shall succeed to the creditor's rights to the extent of his payment". This provision covers not only the person liable (or his insurer), but also a third party who has paid the relevant claim, e.g., when the State pays compensation to people who have suffered environmental harm.

France

CLC and LLMC Convention

The subrogation of a person (such as an insurer) who has indemnified a claimant is governed by the rules of our domestic law on subrogation. This person acquires the rights of the claimant for the value of the sums paid and can therefore file a claim against the fund accordingly. Article 65 of the law of 1967 specifically provides that the shipowner which has paid all or part of a claimant's claim is entitled to substitute it in the distribution of the fund.

Germany

CLC and LLMC Convention

To the full amount, without limitation.

Greece

CLC

Art. V para. 5 of the LLC is applicable. In implementing para 6 of the same article, the Greek Pollution Decree extends the subrogation rights to the Hellenic State. In particular, the Hellenic State has the right to compensate a third party that suffered damage as a result of the pollution. The Hellenic State, as from the time of payment of such compensation, acquires automatically by subrogation the rights which the compensated party would have enjoyed under the Convention (Article 16 of the Pollution Decree).

LLMC Convention

This matter is not regulated in the Rules of Procedure of the CPML. The right of subrogation is permitted up to the amount of the compensation paid, if it is based on contract (arts 455 CC) or in cases provided for explicitly by specific substantive provisions.

Ireland

LLMC Convention

Up to the amount paid.[16]

CLC

Up to the amount paid.[17]

HNS Convention

Irish law is silent on this point.

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[16] Article 12(2) Convention on Limitation of Liability for Maritime Claims 1976.

[17] Section 12(2) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

Italy

CLC

The right of subrogation is permitted under Italian law up to the amount of compensation paid.

Mexico

CLC and LLMC Convention

Any subrogation is subject to the same limitations as if the original claimant presented the claim.

Netherlands

CLC and LLMC Convention

Pursuant to Dutch law, a debtor or underwriter who has paid an amount of compensation in respect of claims subject to limitation of liability, will by operation of law become subrogated in the rights of the creditor (Article 642*j* CCP).

New Zealand

CLC and LLMC Convention

Subrogation is usually permitted.

Norway

CLC and LLMC Convention

According to MC § 176, cf. MC § 195, any person having paid a claim subject to limitation is by subrogation entitled to make the claim against the person liable. A person who may be forced to pay a claim later, e.g. a ship owner having to settle a claim, and thereby acquire the claim by subrogation may also participate in the distribution of the limitation amount.

Slovenia

CLC

We have no such provisions.

Sweden

LLMC Convention

MC, Chapter 9 Section 6 paragraph 3 and 4 - If the owner/operator or any other person has wholly or partly paid a claim before the limitation amount has been distributed, he shall succeed in the creditor's right to the extent of the payment made. If the owner/operator or any other person shows that he may later become liable to cover, wholly or partly, a claim which, if paid before the distribution of the liability amount, pursuant to paragraph 3 could have been reclaimed from the liability amount according to former sentence, a temporary reservation shall be made in order to enable him to claim his right at a later stage.

CLC

MC, Chapter 10 Section 8 - If the owner/operator or any other person has wholly or partly paid a claim before the limitation amount has been distributed, he shall succeed to the creditor's right to the extent of his pay. If the owner/operator or any other person shows that he may later become liable to cover, wholly or partly, a claim which, if paid before the distribution of the liability amount, could have been reclaimed from the liability amount, a temporary reservation shall be made to enable him to assert his right later. If the owner has voluntarily incurred expenses or losses for preventive measures, he has the same right to compensation against the fund as any other party having suffered damage.

Venezuela

CLC

If before the distribution of the fund the person liable or his assurer has settled a claim against the fund, such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under the law. (Article 47 of VMCL).

QUESTION (j):

Within which set of proceedings and at which time may the counterclaims mentioned in Article 5 of the Convention be brought?

Argentina

LLMC Convention

This question is referred to the LLMC. Argentina is not a party of said Convention.

Australia

CLC and LLMC Convention

Counterclaims my be brought in the limitation proceedings.

Belgium

LLMC Convention

Any counterclaim should be raised in the proceedings on the merits against the owner.

As a general remark I should add that the right of the petitioner to limit his liability should be challenged within 3 months as from the publication in the State's Gazette and the newspapers. Any later challenge is null and void.

Chile

CLC

Art. 1218 of the Chilean Code of Commerce states a similar rule than Article 5 of the LLMC Convention. The counterclaim will be exerted within the same time limit and during the same opportunity mentioned in (h) above.

China

CLC

No express provisions are provided in Chinese law.

Denmark

CLC and LLMC Convention

The counterclaim may effectively be raised so late as the substantive rules on passivity/inactivity on part of the defendant provide; and in case of a fund – limitation as late as the procedural rules permit (which is basically prior to the date when the preparation of the court hearing is completed).

Finland

CLC and LLMC Convention

The relevant provision (Article 5 LLMC) has been written into Chapter 9 § 2, second paragraph. Typically the question of counterclaims arises in collision cases where the owners of the respective vessels seek to limit their liabilities. The limitation rights and actions are then regulated by the applicable legal (both substantive and procedural) rules. There are no *special* rules for counterclaims in limitation actions in the FMC.

It seems to be uncertain, whether a counterclaim which as an independent claim would be time-barred can be used in set-off based on Chapter 9 § 2 as deriving from Article 5 LLMC.

France

CLC and LLMC Convention

They may be filed in the proceedings on the merits on liability and quantum.

Germany

LLMC Convention

The single liability theory applies. The court reviews as above described.

Greece

CLC and LLMC Convention

This matter is not regulated in the Rules of Procedure of the CPML. Thus, the relevant provisions of the Civil Code relating to the offsetting of claims (arts 440 et sqq) will apply as far as they are compatible with the specificity of the limitation procedure. Counterclaims may be brought by an offsetting objection during the legal action instituted by the claimant against whom the shipowner has the relevant counterclaim.

Ireland

LLMC Convention

The substantive proceedings involving the parties. Normal time limits would apply to defending this type of claim.

CLC

N/A

HNS Convention

HNS - N/A

Italy

LLMC Convention

This question relates to article 5 of the LLMC Convention to which Italy is not yet a party.

Mexico

CLC and LLMC Convention

The counterclaim mentioned in Article 5 of the Convention must be brought at the time of the reply to the sue, just as in any normal procedure.

Netherlands

CLC and LLMC Convention

Pursuant to Article 5 LLMC and Article 8:753 (2) Dutch Civil Code, counter-claims arising out of the same casualty shall be set off against the main claims and only the balance (if any) shall be subject to limitation of liability. It follows therefore that the counter-claims may be brought as a defence both against the verification of a claim in the limitation proceedings and in regular separate court proceedings.

New Zealand

CLC and LLMC Convention

Counterclaims my be brought in the limitation proceedings.

Norway

CLC and LLMC Convention

Art. 5 of the 1996 Convention has been implemented in MC § 172 2nd para. In a limitation action the person liable will have to raise the counter claim as a defence in connection with the handling of the claims at "Fund meeting" (Question (h) above). If the right to limitation is, according to MC § 180, invoked independent of a limitation fund (Question (a) above), the counter claim will have to be used as a defence or as a basis for a counter claim according to ordinary rules of civil procedure.

Slovenia

CLC

We have no such provisions.

Sweden

CLC and LLMC Convention

If a person entitled to limitation of liability has a counterclaim against the claimant and the claim and counterclaim have arisen out of the same event, the limitation shall apply only to that part of the claim which exceeds the counterclaim. The MC does not lay down how and when a counterclaim shall be brought before the Court, but it can be concluded that a counterclaim may be raised until the end of the fund meeting.

Venezuela

CLC

Article 60 of the VMCL states a similar rule than Article 5 of the LLMC Convention. According with such article 60 of the VMCL "the shipowner has the right to oppose compensation against a creditor for damages resulting or by reason of the same event".

The counterclaim will be exerted within the five (5) court days after conclude the 10 days mentioned in (h) above.

QUESTION (k):

What is the position of a person who has a claim subject to limitation and has recovered a part of such claim out of other assets of the person liable and subsequently makes a claim against the fund? How does Article 9 apply in such case?

Argentina

LLMC Convention

This question is referred to the LLMC. Argentina is not a party of said Convention.

Australia

LLMC Convention

There are no particular rules relating to this issue and the provisions of the LLMC will be applied.

Belgium

LLMC Convention

In Belgium there is no express provision in this respect.

The views expressed in points i) and ii) also seem to apply insofar as Belgium is concerned.

Chile

If the person recovered a part of the claim and signed a full and final release, then she would be barred to subsequently make a claim against the fund. On the contrary, if the recovery was obtained without signing a full and final release, then she would be entitled to recover the unpaid balance against the fund.

China

No express provisions are provided in Chinese law.

Denmark

LLMC Convention

The claimant will be put in the same financial position as if the total claim (the aggregate of all its claim) had been raised in the fund.

Finland

LLMC Convention

The limits of liability concern the aggregate of all claims arising out of any distinct occasion against the vessel's operator, non-operating owner, manager, charterer or sender of goods and against anyone for whom these persons are responsible (Chapter 9 § 5, second paragraph). Thus the original claim should be taken into account when deciding about the distribution of the fund, but the person liable has the right to succeed to the creditor's rights to the extent of the payment he has made (cf. § 6, third paragraph). It would seem logical, therefore, that the claimant receives money from the fund only to the extent that his share of the fund exceeds the payment already received from the person liable. However, there is no court practice concerning this particular issue.

France

LLMC Convention

This question is too precise to be answered in a general way and it raises substantive rather than procedural issues.

It seems therefore that it could only be decided by the court which will be seized of the questions of liability and quantum.

Germany

LLMC Convention

His claims will also be settled within the process of reviewing the claims by the court. His claim will, if any, be reduced by the recovered part. The liable party has an own claim against the fund in the amount of the recovered part.

Greece

CLC

This matter is not regulated by the Pollution Decree.

LLMC Convention

This matter is not regulated in the Rules of Procedure of the CPML.

Ireland

LLMC Convention

Irish law is silent on this point

CLC

Irish law is silent on this point.

HNS Convention

Irish law is silent on this point.

Italy

CLC

Reference is made here to Article 9 of the LLMC Convention, to which Italy is not yet a party.

Mexico

CLC and LLMC Convention

The recovered part will be deducted from the amount awarded against the fund.

Netherlands

CLC and LLMC Convention

This question has not been dealt with in Dutch legislation with regard to global limitation of liability or Dutch limitation procedure. Further, to my knowledge, this situation has not yet occurred in Dutch limitation proceedings. Presumably however, in the division of the limitation fund, this person shall in one way or other have to account for the amount already recovered by other means than through the limitation fund. It is even conceivable that the limitation Court would decide that such a person would have forfeited his right of claim against the fund.

New Zealand

CLC and LLMC Convention

In New Zealand, s 86(1) of the Maritime Transport Act provides that no person who is entitled to limitation of liability shall be liable for an amount greater than the relevant limit. Further, s91 enables the court to order release of the vessel if security has been given in New Zealand or elsewhere in respect of the claim and the court is satisfied the amount of the guarantee will in fact be available to the claimant if the claim is established.

Norway

CLC and LLMC Convention

Any claimant, who has recovered part of his claim from a person liable, will, under Norwegian law, be only entitled to make a claim for the remaining part in the limitation fund. However, the person having settled part of a claim, may by way of subrogation make a claim against the limitation fund equivalent to the part of the claim already paid (MC § 176, cf. art. 12 of the Convention).

Slovenia

We have no such provisions.

Sweden

LLMC Convention

There is no express answer to this question in the MC. However, if a claimant has received part of a claim subject to limitation from assets not part of the fund, general principles suggest that only the remaining amount can constitute a claim against the fund. MC, Chapter 9 Section 8 paragraph 1 - A claimant against a limitation fund constituted in Sweden or in any other Convention State may not, on the basis of his claim, obtain any other security measures or distrait in the vessel or other property belonging to any person for whom the limitation fund is constituted and who is entitled to the same limitation of liability. There are no rules in the MC which deal with a situation where a party has recovered part of a claim subject to limitation before the constitution of a fund.

CLC

There is no express answer to this question in the MC. If a claimant has received part of a claim subject to limitation from assets not part of the fund, general principles suggest that only the remaining amount can constitute a claim against the fund. MC, Chapter 10 Section 9 - If a limitation fund has been established and the owner is entitled to limit his liability, no other asset of the owner may be used for satisfying compensation claims which can be raised against the fund. There is nothing said about the situation where a person has recovered a part of a claim subject to limitation before the constitution of a fund.

Venezuela

CLC

This question is too precise to be answered in a general way and it raises substantive rather than procedural issues.

It seems therefore that it could only be decided by the court which will be seized of the questions of liability and quantum.

As a general principle of Venezuela obligations law, the person who has recovered a part of the claim would be barred to subsequently make a claim against the fund for the balance.

QUESTION (l):

Whether a plan for the distribution of the fund among the claimants must be prepared and by whom.

Argentina

CLC

See (h).

Australia

CLC and LLMC Convention

There is no requirement for any particular party to prepare a plan for distribution of the fund. The Court will manage the distribution.

Belgium

LLMC Convention

See above: the Liquidator of the fund will prepare a draft distribution where he comments both substance and amount of the claims, as well as the question whether the claim is subject to limitation.

Chile

CLC

Yes there will be a plan for the distribution of the fund among the claimants prepared by the Trustee, who will present it for the Court's approval. The distribution must consider the rules on maritime privileged credits, which may have priority of payment than others.

China

CLC

This issue is provided in Article 118 of the SMPL of the PRC, which reads:

"The creditors meeting may through negotiation put forward a plan for

distribution of the proceeds from auction of the ship or the limitation fund for maritime claims and sign an agreement on satisfaction.

The agreement on satisfaction shall be legally binding after the maritime court makes an order to confirm it.

Where consultation at the creditors meeting fails, the maritime court shall, according to the ranking of claims provided for in the Maritime Code of the People's Republic of China and other related law, decide on the plan for distribution of the proceeds from auction of the ship or the limitation fund for maritime claims."

Denmark

CLC and LLMC Convention

It is up to the Court to decide who is to make such plan, if any, for the distribution of the fund.

Finland

CLC and LLMC Convention

As was said earlier (*supra* under *(h)*), prior to the fund meeting the administrator (or the Court) shall examine the submitted claims and, as far as possible, draw up a proposal for the distribution of the fund.

France

CLC and LLMC Convention

Yes. Pursuant to article 82 of the decree, when the "Statement of the claims" has become final (which means that all the disputes against the "statement", fixed by the Judge of the control, have been dealt with by the court in accordance with the provisions of article 77 – as explained above in our answer to question (h) –), the liquidator prepares a "table for the distribution" of the fund and submits it to the Judge of the control. The liquidator thereafter informs each claimant of the sum it will receive out of the amount of the fund.

Germany

CLC and LLMC Convention

The plan will be prepared by the court after reviewing the claims.

Greece

CLC

The distribution of the Fund is made on the basis of the Distribution Plan prepared by the Fund Administrator.

LLMC Convention

A final Distribution Plan is drawn by the Reporting Judge after the Meeting of Creditors has reached an agreement on the assessment of the claims or after the Court issues a final and unappealable Judgment on the objections filed against the assessment of the claims (Art. 12 of the LLMC Convention and art. 100 CPML).

Ireland

LLMC Convention

The court distributes the fund among the claimants in proportion to their established claims against the fund.[18]

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[18] Article 12(1) Convention on Limitation of Liability for Maritime Claims 1976.

CLC

The court determines the amount (if any) due to any person making a claim and the fund is then distributed in proportion to that determination.[19]

HNS Convention

The court will determine who is entitled to receive compensation from the applicant and the fund is then distributed in proportion to the amounts of the established claims.[20]

Italy

CLC

Pursuant to article 637 CN once the claims against the fund have been definitely allowed by the Tribunal, the claimants may agree on the distribution of the fund. Failing an agreement, the plan for the distribution of the fund is prepared by the appointed judge.

Mexico

CLC and LLMC Convention

No, the Court is the only entity that can distribute the fund and assign percentages.

Netherlands

CLC and LLMC Convention

As stated above below h), it is normally the administrator of the fund who prepares one or more lists of provisionally acknowledged or provisionally contested claims (Article 642*l* (5) CCP). After all the contestations of claims and disputes between the parties have been resolved either amicably or in renvooi-proceedings, it is again the administrator who normally will prepare the final statement(s) for the distribution of the funds (Article 642*s* (1) CCP). However, if the parties involved in the limitation proceedings reach amicable settlement about how or on which principles the fund is to be distributed over the creditors, it may well be that the statement of distribution is drafted by the Dutch attorneys acting for these parties. In the end it is always the Court, which must give its final approval of the statement of distribution (Article 642*s* (1) CCP). The Court may also issue a provisional statement of distribution (Article 642*x* (1) CCP).

New Zealand

CLC and LLMC Convention

There is no requirement for any particular party to prepare a plan for distribution of the fund. The Court will manage the distribution.

Norway

CLC and LLMC Convention

Such a plan, setting out also the relevant issues to be dealt with before distribution of the fund, shall be prepared by the court or by an independent consultant and submitted to the "Fund meeting" (Question (h) above). Any disputed issue shall be decided separately by the court (MC § 241).

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[19] Section 12(2) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.

[20] Section 14(2) Sea Pollution (Hazardous Substances) (Compensation) Act 2005 (NB Not yet in force – awaiting a statutory instrument).

Slovenia

CLC

A plan for the distribution must be prepared by the court.

Sweden

CLC and LLMC Convention

MC, Chapter 12 Section 11 - The Court or an appointed administrator shall draw up a proposal for the distribution of the fund. If there remains no objection to the proposal, as duly amended at the fund meeting, after the end of the meeting, the proposal shall form the basis for the distribution.

Venezuela

CLC

A plan for the distribution of the fund among the claimants must be prepared by a Trustee (Liquidator) appointed by Court, who will present it for the Court's approval. The distribution must consider the rules regarding preference established for maritime privileged credits. (Article 66 of VMCL).

QUESTION (m):

Whether the plan may be challenged and how.

Argentina

CLC

See (h).

Australia

CLC and LLMC Convention

Directions can be sought from the Court.

Belgium

LLMC Convention

See above: yes. In substantive proceedings before the Commercial Court by filing submissions.

There is no specific time-limit applicable, but before distribution of course.

Chile

CLC

The plan may be challenged presenting a recourse of reconsideration against the resolution whereby the Court approved the fund distribution, not later than 5 days from the publication in the Gazette of that resolution.

China

CLC

Also see the answer to question (l).

Denmark

CLC and LLMC Convention

If such plan has been made, it may in the circumstances be challenged at a fixed court meeting; or during the preparation of the fund-case pending before the Court; and/or during the final hearing.

Finland

CLC and LLMC Convention

Also here reference is made to what was said under *(h)*, *supra*. The administrator and the fund meeting seek to settle all objections to the proposal. If any objection remains at the end of the fund meeting, the objecting person shall request the Court's decision of the dispute.

France

CLC and LLMC Convention

No. The above "table for the distribution of the fund" which represents the very last stage of the proceeding, cannot be challenged.

Germany

CLC and LLMC Convention

The claimants will be furnished with the plan automatically after its publishing.

Greece

CLC

The Distribution Plan is drawn by the Fund Administrator after the Court issues a final Judgment on every Objection filed as above and that Judgment becomes irrevocable; then the Fund Administrator notifies the Reporting Judge that the Distribution Plan is drawn and files same with the Secretary of the Court. The Distribution Plan may be challenged further for accounting errors only. The application to correct an accounting error is filed before the Reporting Judge within fifteen days from filing the final Distribution Plan with the Secretary of the Court (Article 22 of the Pollution Decree).

LLMC Convention

The Distribution Plan that is drawn by the Reporting Judge (above, under l) is final and may not be challenged (Art. 12 of the LLMC Convention and Art. 100 CPML).

Ireland

LLMC Convention

N/A

CLC

N/A

HNS Convention

N/A

Italy

CLC

The plan may be challenged within ten days from its filing with the chancery of the Tribunal, but only for issues regarding the ranking of the claims.

Mexico

CLC and LLMC Convention

The Court award may be appealed as in any other judicial proceeding.

Netherlands

CLC and LLMC Convention

As stated above below h) and l), the final statement(s) or plan(s) for the distribution of the fund(s) are the result either of amicable settlement between the parties involved or of resolution of disputes in renvooi-proceedings (possibly even in appeal and appeal in

cassation). After the final plan has been prepared in draft, the Court will deposit this plan at the Court Clerk's Office during 14 days for inspection free of charge by the interested parties (Article 642*u* (1) CCP), who will be given proper notification (Article 642*u* (2) CCP). After having heard or given proper notice to the parties the Court will take its decision with regard to the approval of the plan(s) for the distribution of the fund(s) (Article 642*u* (3) CCP). This decision of the limitation Court pursuant to Article 642*u* (3) CCP is neither subject to appeal, nor to appeal in cassation (Article 642*y* (1) CCP).

New Zealand

CLC and LLMC Convention

Directions can be sought from the Court.

Norway

CLC and LLMC Convention

Any party attending the "Fund meeting" may take issue with one or more features of the plan, in which case the court shall identify the issue and determine who shall as plaintiff and defendant argue the issue as a separate dispute. The parts of the plan not contested at the "Fund meeting", shall serve as a basis in connection with the distribution of the fund (MC §§ 241-42).

Slovenia

CLC

The plan may be challenged in the trial.

Sweden

CLC and LLMC Convention

MC, Chapter 12 Section 11 - The claimants can object to the proposal.

Venezuela

CLC

The plan may be challenged by any of the creditors presenting a recourse of reconsideration against the plan, which will be decide by the Court. The decision of the Court may be appealed.

QUESTION (n):

Whether in such case the distribution must be stayed until a final decision issued.

Argentina

CLC

No specific provision on this issue has been included in the Navigation Act. Although debatable, a reasonable solution may be to distribute the fund among the claimants whose credits have not been challenged and to keep in the fund enough money to afford the credits that have been challenged.

Australia

CLC and LLMC Convention

Yes.

Belgium

LLMC Convention

The answer is yes.

Chile

CLC

The distribution is not suspended when a challenge has been filed. In such case, the Trustee must make a proportional provision or reserve of funds that he may consider prudent.

China

CLC

Under Chinese law, the court must firstly examine and confirm the relevant maritime claims before the distribution of the limitation fund. In other words, the distribution must be stayed until a final decision issued. However, it should be noted that the judgment on confirming the maritime claims, which is delivered by the Chinese maritime court in charge of the relevant procedure for constitution of limitation fund, is deemed final, and no appeal is permitted. This is provided for in Article 116 of the SMPL of the PRC, which reads:

"Where a creditor wishes to provide other maritime claim evidence, he shall, after having registered his claims, bring an action to confirm his rights before the maritime court where the claims are registered. Where an arbitration agreement has been concluded between the parties, they shall apply for arbitration promptly.

The judgments and written orders made by the maritime court to confirm the right are legally binding, no parties may appeal against them."

Denmark

CLC

When all disputed items have been settled, the Court shall distribute the fund. This can be done by way of either a (simple) court order/decision or by way of a judgment, which judgment will finally settle all claims, which have or could have been addressed to the fund. Only a judgment (not a court order/decision) has this prejudicing effect.

Finland

CLC

When a request has been made by the objecting person, the Court shall summon the administrator of the fund into court. The person who has constituted the fund shall also be summoned, if the objection concerns the right to limitation or the limitation amount. And a creditor shall be called, if his claim is being objected. But already after the expiry of the submission period (*supra* under *(f)*), the Court may order that a certain part of the proven claims shall be paid (Chapter 12 § 13).

When all disputes are settled, the Court shall decide on the distribution of the fund. As was said earlier, the Court may reserve a certain amount for covering claims which have not been submitted before end of the distribution of the fund. Such amount shall be distributed when all claims submitted have been considered and it can be assumed that no further claims will be submitted (Chapter 12 § 14, second paragraph; cited *supra* under *(f)*).

Distribution of the fund shall take place even if the person constituting the fund has no right to limitation of liability. In such case the Court, upon motion, may give judgment concerning the part of a claim that is not paid out of the fund (Chapter 12 § 14, third paragraph).

France

CLC

This question is not relevant in view of our answer to the previous question.

Germany

CLC and LLMC Convention

Only after the final decision the distribution starts.

Greece

CLC

The final distribution of the fund is made to the Claimants in proportion to their established claims according to the Distribution Plan, after the lapse of the fifteen day time limit for an application to correct an accounting error in the Distribution Plan (Article 23 of the Pollution Decree). However, the Fund Administrator may propose that provisional payments are made to the claimants and to himself on account of his fees and expenses, even before the Distribution Plan is drawn. Provisional payments are approved by the Reporting Judge (Article 24 of the Pollution Decree).

LLMC Convention

As mentioned above (under m), the final Distribution Plan may not be challenged. Besides, the Fund Administrator, with the approval of the Reporting Judge, may make provisional distributions to the persons entitled under the uncontested claims, retaining in full the amounts corresponding to the contested claims (Art. 101 CPML).

Ireland

CLC

N/A

LLMC Convention

N/A

HNS Convention

N/A

Italy

CLC

Yes. In such case the distribution must be stayed until a final decision is issued.

Mexico

CLC and LLMC Convention

Yes, the distribution will be done once there are no more possible remedies to the parties.

Netherlands

CLC and LLMC Convention

The Court may determine a provisional plan for the distribution of the fund pursuant to Article 642x (1) CCP. If the Court orders that on the basis of the provisional plan of distribution a payment is to be made to creditors, the Court may in its discretion also order that a kind of counter-security is given (Article 642x (2) CCP). In practice it is very rare in Dutch limitation proceedings that the limitation Court draws up a provisional plan of distribution. In general distribution of the fund must wait until amicable settlement is reached or a final decision has been issued with regard to all the disputes that keep the parties divided .

New Zealand

CLC and LLMC Convention

Yes.

Norway

CLC and LLMC Convention

The court shall not decide questions relating to the distribution as such of the fund until all particular questions, included disputed claims, in the limitation action have been settled or decided by the court or, if applicable, the appellate courts.

Slovenia

CLC

Yes.

Sweden

CLC and LLMC Convention

MC, Chapter 12 Section 14 paragraph 2 - Should any objections remain at the end of the fund meeting, the Court shall set out a certain period of time within which the objecting party shall state whether he maintains his objection and requests the matter to be referred to and decided by the Court. Once all disputes have been settled, the Court shall decide on the distribution of the fund.

Venezuela

CLC

The distribution is not suspended when a challenge has been filed. In such case, the liquidator must make a proportional provision or reserve of funds that he may consider prudent until the Court decision is final. (article 68 VMCL).

QUESTION (o):

Which are the effects of the bankruptcy of the owner on the limitation proceedings.

Argentina

CLC

Once the limitation fund has been constituted, we consider that the bankruptcy of the ship-owner not have any effect on the limitation proceedings. There should be two separate funds and two separate set of proceedings.

Australia

CLC and LLMC Convention

Under Australian law it is likely that the constitution of a limitation could be considered to be a voidable transaction within the meaning of s588FE of the Corporations Law (similar provisions exist in relation to personal bankruptcy). Thus, depending upon the timing of the insolvency of the shipowner in relation to the winding up and the constitution of the fund, the establishment of the fund could be set aside to ensure those funds are available to the general creditors.

Belgium

LLMC Convention

It does not affect the fund and its distribution as per Article 49 of the Belgian Maritime Code, but the petitioner and the Trustee of the bankruptcy must be invited to be party to the distribution proceedings.

Chile

CLC

This is a very complex question. If we apply the general principles set in the

Chilean Bankruptcy Law, it could be concluded that the limitation proceedings, as a proceeding against the bankrupt person, should be accumulated to the bankruptcy proceeding.

But if we take into account that the limitation fund is a special proceeding to pay and distribute funds between only maritime claims, as a consequence of the right to limit liability (which is not the general rule in Civil and Commercial law) then it could be concluded that the other creditors cannot be paid with that special fund.

This is inferred from art. 1217 of the C. Com. which states that once the fund has been constituted, no right whatsoever may be brought against the fund, which remains exclusively destined for the payment of claims in respect of which limitation of liability can be invoked.

In brief, the effects of the bankruptcy of the owner on the limitation proceeding are:

(i) The bankruptcy produces the effect that any proceeding by or against the bankrupt person must be accumulated or attached to the bankruptcy proceeding;

(ii) If the limitation fund was constituted before the bankruptcy, the limitation proceeding will be attached, but will continue as a special proceeding in the bankruptcy and only the maritime claims in respect of which limitation of liability can be invoked, may be paid by the fund;

(iii) If maritime claims are paid in full, and there is still an outstanding balance remaining, art. 1227 states the balance will be restituted to the party who constituted the fund. So, if the fund was constituted by the bankrupt owner, the balance should pass to the general fund in the bankruptcy proceeding and would favour non marine claimants.

But, for instance, if the fund was constituted by a third party such as the P&I, the remaining balance should be restituted to the Club.

(iv) If the bankruptcy was declared before the initiation of any limitation proceeding, then, if the latter is applicable, it should be requested and constituted as a special proceeding, within the bankruptcy proceeding.

China

CLC

There are no express provisions regarding this issue under Chinese law. And it seems that no disputes in this respect have arisen before Chinese maritime courts up to now.

Denmark

CLC and LLMC Convention

The fund proceedings will continue but with the bankruptcy estate acting as the competent party.

Finland

CLC and LLMC Convention

If the limitation fund has been constituted by depositing a guarantee provided by a bank or a P&I Club, the fund does not become part of the owner's bankruptcy estate. However, the position becomes unclear if the owner makes a cash deposit. Arguments in favour of a similar view also in this case are:

– by constituting the fund, the owner loses his possibility to dispose of the cash,

– as the constitution of the fund has the effect of prohibiting (and annulling) all security measures or distraints against the vessel or other property belonging to any person for whom the fund has effect (Chapter 9 § 8), the creditors could lose their security if the fund becomes part of the bankruptcy estate. The legal position of the creditors should not depend on the manner in which the limitation fund is constituted, and

– even if the LLMC 1976/96 is silent on this issue, a solution whereby the cash

deposit forms part of the owner's bankruptcy estate would, arguably, be against the "spirit" of the Convention.

But there is no court practice on the issue, and another view is also possible, that is, to consider the cash deposit to the fund comparable with a security for debts, and thus forming part of the owner's property.

France

CLC and LLMC Convention

Pursuant to article 62 of the law of 3 January 1967, the amount of the fund, once the fund has been constituted, is exclusively assigned to the payment of the claims which are included in the above "table for the distributions".

Germany

CLC and LLMC Convention

After the constitution of the fund bankruptcy of the owner has no effects at all. The fund is separated from the bankruptcy.

Greece

CLC

The limitation fund is separated from the property of the Debtor and is only available for the payment of the claims in respect of which limitation of liability has been evoked (Article 9 para. e of the Pollution Decree). The bankruptcy of the Debtor (or any third party that constituted the limitation fund) has no effect on the limitation proceedings. The fund is not part of the bankruptcy property (Article 9 para. f).

LLMC Convention

This matter is not regulated in the Rules of Procedure of the CPML. The bankruptcy of the Debtor, if it takes place before the limitation proceedings, hinders such limitation because the bankrupted shipowner will be no more able to dispose of his own property. In contrary, the Greek legal theory seems to accept that the bankruptcy of the Debtor, which is consequent to the limitation of liability, has no effect on limitation proceedings.

Ireland

LLMC Convention

Generally speaking, if the fund was constituted by the relevant insurer, any creditors of the bankrupt ship owner would have no rights against the fund. If there was a bona fide constitution of a fund by the ship owner when solvent and prior to the bankruptcy, creditors of that bankrupt ship owner should have no rights of redress against the fund.

CLC

Ditto.

HNS Convention

Ditto.

Italy

CLC

Pursuant to article 639 CN the bankruptcy of the owner if subsequent to the date when the claims have been definitely allowed, does not affect the limitation proceedings; the fund is not included in the property of the bankruptcy divisible amongst the creditors, and the claimants whose claims are subject to limitation are not entitled to participate in the distribution of the property of the bankrupt.

Mexico

CLC

If the fund has been already constituted, it remains separately from the Owner bankrupt. If the Owners have not constituted the fund, then the claims will not be subject to limitation, but will enter the bankruptcy procedures.

Netherlands

CLC and LLMC Convention

Bankruptcy of the owner or any other party entitled to limitation of liability who constitutes a limitation fund generally has no effect on the limitation proceedings. Pursuant to Article 21 (5) Faillissementswet (Insolvency Act), the fund is not part of the insolvent's estate. The only procedural effect is that the insolvency liquidator will be entitled to replace the insolvent party in the limitation proceedings and to intervene in renvooi-proceedings (Article 642*r* (4) CCP).

New Zealand

CLC and LLMC Convention

A result similar to that indicated for Australia would follow in New Zealand law.

Norway

CLC and LLMC Convention

The 1996 Convention art. 11 para.1 has been implemented in MC § 177 2nd para. Accordingly, MC § 239 provides that the fund may not be released except by the consent of the person liable and all claimants having given notice of claim to the court. MC § 195 (oil pollution) does not contain any provision equivalent to § 177 2nd para., but MC § 239 on the release of the fund also applies to limitation funds for oil pollution.

The fund is protected in bankruptcy, also because the sum or the security ordinarily has been provided by the liability insurer.

Slovenia

CLC

We have no such provisions.

Sweden

CLC and LLMC Convention

The matter of the owner entering into bankruptcy (liquidation) during the limitation proceedings is not regulated in Swedish maritime law. General rules suggest, though, that a bankruptcy will not affect the distribution of the limitation fund. If limitation of liability has been invoked without constitution of a fund, a bankruptcy will probably affect the creditors' prospects of getting their claims covered. The Swedish Insurance Contracts Act (1927:77) section 95 paragraph 3 - If a policy-holder, who is declared bankrupt, is entitled to claim compensation under a liability insurance, but which he has no right to draw without the consent of the party who suffered the damage, the suffering party has the right to take over the insured's claim against the insurer.

Venezuela

CLC

The VMCL is clear is this respect. There is an article (Art. 71) by which it is established that the Limitation as a maritime insolvency proceeding has priority over a general bankruptcy proceeding of the shipowner. Such article says that the fund of the limitation proceeding will not be attached to the bankruptcy proceeding provided the right of the shipowner to limit his liability has not been denied. Just and only in the latter

case the Court will the transfer of the funds deposited in the limitation proceeding to the bankruptcy proceeding.

QUESTION (p):

Whether there are any other issues relating to the limitation procedure in force in your country that are worth mentioning.

Argentina

CLC

See point 2.- of the Introduction to this paper.

Australia

CLC and LLMC Convention

The procedural rules in Australia apply generally to matters arising under:

1. the CLC
2. the LLMC or
3. any other international convention that is in force in relation to Australia and makes provision with respect to the limitation of liability in relation to maritime claims.

Belgium

LLMC Convention

It is generally believed that arrests must be lifted immediately. However, the Arrest Judge has the right to decide *prima facie* without binding the substantive Court that the difference between the limitation fund and the amount of the claim should be secured and that the arrest is not lifted until the difference will be secured by a bank guarantee if he finds that the Petitioner has committed an intentional or inexcusable fault barring him from the right to limit his liability. He may also - again on a preliminary basis and without binding the substantive Court - find that a particular claim falls outside the scope of the limitation (and should therefore be guaranteed).

Chile

CLC

We consider worth to mention the effects once the limitation fund has been constituted, and so declared by the competent Court. In fact, art. 1217 of the C. Com. states that any individual execution of any precautionary measure such as the arrest of ship shall be suspended. As a consequence of that, any interested party may request the release of the arrest.

Likewise, as already mentioned in letter (o) above, the fund shall be available only for the payment of claims in respect of which limitation of liability is invoked.

China

CLC

No.

Denmark

CLC and LLMC Convention

We shall revert later with a very interesting issue, which concerns the relationship between the Judgments Convention; and the right to enforce EC-judgments without limiting the amount in question or challenging its exequatur on the one side; and the Convention on Limitation of Liability for maritime claims; and the right to limit liability, on the other side.

Two Danish judgments rendered by Courts on the same judgment-level have reached different conclusions on the question, i.e. where a final non-appealable German EC-judgment in a collision case, rendered on basis of the German global limitation rules, was acknowledged and considered enforceable by Vestre Landsret ("The Western High Court of Denmark"); whereas the Maritime and Commercial Court of Copenhagen, where a limitation fund had been constituted, found that the German judgment should be submitted to the Court, but should then form part of the limitation proceedings to the effect that a second limitation of the underlying claim should be accepted, this time according to Danish law, lex fori.

The dispute, inter alia, concerned the question whether the Limitation Convention is a "special convention" within the meaning of Article 57 of the Judgments Convention. Vestre Landsret found that it was not – especially in view of the original Travaux Préparatoires (inter alia the Schlosser Report) and in view of the main rule set out in Article 29 of the Convention; whereas the Maritime and Commercial Court of Copenhagen found that the Limitation Convention in the opinion of the Court is an Article 57 Convention. This Court found that most factors supported such conclusion and also indicated that a different conclusion would have unpredictable consequences, as exequatur could be attempted in any of the 25 EC member states, although a limitation fund has been constituted in another EC state.

We shall revert with further information and documentation about this issue, where the undersigned represented the Owner invoking the limitation rules.

Finland

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France

CLC and LLMC Convention

If, as we understand it, the aim of this questionnaire is to contemplate the feasibility of unified procedural rules in limitation conventions, it would be useful that each country highlights the weaknesses of its own procedural rules so that they are set aside from any attempts to draft rules that could be proposed by the CMI.

The French system has two main defects:

(i) The right of the owner to limit liability can be challenged, as we have explained it in our answer to question (b), before two different judges:

– the President of the Commercial court who has rendered the order constituting the fund and,

– the court seized of the merits of the case.

The possibility offered to claimants to seize the President of the Commercial court, in summary proceedings, of the question whether the owner is entitled to limit his liability, or not, is the result of the interpretation given by the jurisprudence of some of our courts of the decree of 1967 and more precisely of its article 61.

It is not satisfactory as this interpretation allows Presidents of Commercial courts in summary proceedings to decide on the fundamental issue of the right of the shipowner to limit liability.

This issue, which is a substantive one, should therefore be of the sole competence of a court in the framework of substantive proceeding.

Although it is a matter of French procedural law, it raises the question of the proper court to hear the question of the right of the owner to limit his liability which needs to be contemplated and resolved in the proposed unified rules.

Assuming the proper court is that which is seized on the merits of the liability and the quantum issues, claimants should be prevented, through coercive procedural means, to challenge the right of the owner to limit his liability before the court before

which the limitation fund has been constituted, which, in a number of cases, is not the same.

But the opposite can be contemplated in the same way, in which case, claimants should be prevented by coercive procedural means from challenging the right of the owner to limit his liability in the framework of the proceedings on liability and obliged to raise this issue before the court before which the limitation fund has been constituted.

This solution would be sensible in cases where several courts are simultaneously seized of the liability issues in different countries and may render, for the same event – unless connexity can be pleaded successfully –, conflicting decisions on the owner's right to limit.

Therefore, the question of the consolidation of the limitation proceedings before one court only, i.e. the court seized of the liability issue (if there is only one dispute) or alternatively the court before which the fund has been constituted (if several courts have been seized of several liability issues), would need to be discussed within the CMI in matters where there are several claimants and concurrent forums.

(ii) The system of assessment of claimants' claims provided for by the decree of 1967 is extremely complicated and, it does not work because in most cases the claims are assessed by the court seized on the merits of the liability and quantum issues and the work of the liquidator is limited.

In practice, the liquidators wait for the outcome of those proceedings (which may take place simultaneously but at different speeds before the courts of different countries) to present to the Judge of the control his proposals for the admission or rejection of the claims filed into his hands, as explained above in our answer to question (h).

But in cases where there are a lot of claimants against the fund, each of those claimants have, at that stage, the theoretical possibility to dispute the claims of the other claimants which have been admitted by the liquidator and the Judge of the control of the constitution fund proceeding.

Although, to our knowledge no proceedings have ever reached that stage, this duplication of proceedings and recourses is not satisfactory.

Therefore, the question of the proper court to assess the claimants' claims should also be discussed within the CMI so that the system of assessment of claims proposed by the unified rules of the CMI avoids the duplication of proceedings.

We would finally like to draw the attention on the consequences for the claimants of the bankruptcy, in the course of the proceedings, of the person who has constituted a fund and who is found liable and entitled to limit its liability. Such a bankruptcy should have no effect on the distribution of the fund which should therefore be exclusively remitted to the claimants who are entitled to it. A clear provision to that effect should be included in the unified procedural Rules of the CMI.

Germany

CLC and LLMC Convention

With the "Schiffahrtsrechtliche Verteilungsordnung" the German law is very well prepared to settle both CLC & LLMC claims in one law.

Greece

CLC

(a) Jurisdiction of the Greek Courts

Jurisdiction for the constitution of the limitation fund is awarded to the First Instance Court of the court district where the incident that caused the pollution occurred or, if the incident consists of a series of events, the court district where the first serious event occurred. In case that the incident or the first of a series of events occurred outside the Greek territory, then jurisdiction is awarded to the First Instance Court of the court

district where the first serious event occurred or where the first event of preventive measures to prevent or minimise damage to the territory occurred (Article 1 para. 1 (a) of the Pollution Decree). The wording of this provision is not fully compatible with Article IX (1) of the Convention; for example, the jurisdiction of a Greek court could be questioned in a theoretical case where an incident of pollution occurs entirely within the Greek territory but no damage is sustained in Greece.

(b) Objection against the Statement of the Debtor for the limitation of liability

A Claimant who questions that the Debtor has the right to limit his liability in accordance with the Convention may file an objection before the Court against the Statement of the Debtor for the limitation of liability. This objection is filed within the time limit for filing a Notice of Claim. If the objection is admitted by the Court with a final and unappealable Judgment, then the limitation of liability has no effect towards the Claimant who filed the objection and that Claimant is removed from the Distribution Plan (Article 28 of the Pollution Decree).This provision seems rather unfortunate as it could be interpreted to mean that, even though a final and unappealable Judgment has declared that the Debtor did not have the right to limit his liability under the Convention, the limitation proceedings would carry on for the claimants who were not party to the objection proceedings.

Ireland

LLMC Convention
CLC
HNS Convention

Italy

CLC
Reference is made to the Introduction.

Mexico

CLC
Once the fund is established, no precautionary measures can be requested against Owners assets.

Netherlands

CLC and LLMC Convention

1. Under Dutch limitation procedure, after the limitation fund has been constituted and it has been established that the applicant is entitled to limitation of liability, he (and all other persons entitled to limitation) must ask for the suspension of all proceedings pending against him (or them) before Dutch Courts regarding claims subject to limitation (Article 642*f* (1) CCP). Failure to do so, will result in the loss of the right to limitation of liability of that person(s) towards that or those creditor(s) (Article 642*f* (4) CCP).

2. In the *Mighty Servant II*-decision dated 30 October 2002 (*Schip & Schade* 2003, 26) the Rotterdam Court has held in a case where the bare-boat charterer/ disponent owner had constituted a limitation fund with the Rotterdam Court and a charterer wished to rely on that fund as well, that according to Dutch limitation (procedural) law, the charterer had to exercise its right to limitation of liability by issuing its own application for the commencement of limitation proceedings to the Rotterdam Court, but by reference to the already existing fund. The original decision (in Dutch) and an English translation of same will be attached to this questionnaire.

New Zealand

CLC and LLMC Convention

The procedural rules in New Zealand apply generally to matters arising under:

1. the CLC
2. the LLMC or
3. any other international convention that is in force in relation to New Zealand and makes provision with respect to the limitation of liability in relation to maritime claims.

In New Zealand the Court has no power to order the applicant in limitation proceedings to constitute a fund. See *Tasman Orient Line CV* v. *Alliance group Ltd.* [2004] 1 NZLR 650

Norway

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Slovenia

CLC

No.

Sweden

CLC and LLMC Convention

No additional information.

Venezuela

CLC

We consider worth mentioning the effects once the limitation fund has been constituted, and so declared by the competent Court. First, as per Art. 59, any individual execution of any precautionary measure such as the arrest of ship shall be suspended. As a consequence of that, any interested party may request the release of the arrest. Second, as per article 61 by which once constituted the fund all existing claims, actions and proceedings or which may be aroused against the petitioner, to which he may opposes his liability, shall be accumulated to the limitation proceeding.

E. WRECK REMOVAL

DRAFT CONVENTION

BY PATRICK GRIGGS, CBE*

In my N.J. Healy lecture at New York University in November 2002, I talked about the obstacles to unification of international maritime law. I identified one of those obstacles as the enormously long gestation period for any international harmonising instrument and I quoted several examples. That consideration applies to the Draft Wreck Removal Convention.

As long ago as 1974/75 the Legal Committee of IMO (IMCO) conducted a review of national laws in member states on wreck removal with a view to introducing a harmonising instrument. Nothing came of this.

The topic of wreck removal was next raised by Germany, Greece, the Netherlands and the United Kingdom at the 69th Session of the IMO Legal Committee in October 1993. So here we are now approaching the Spring of 2006 and the 91st Session of the Legal Committee in April and we are still only looking at a draft which require further work. To be fair, this delay is partly due to the fact that the Legal Committee has, since 1993, been heavily engaged upon other matters: the HNS Convention, revision of the 1976 Limitation Convention, the Athens Protocol, SUA Protocol etc.

So the topic was first raised, in its current form, at a Legal Committee meeting in the autumn of 1993. At the 70th Session in the spring of 1994 Germany, the Netherlands and the United Kingdom submitted a further paper on the topic which argued that an international treaty on wreck removal was necessary in order to establish uniform rules for wreck removal operations in international waters. The co-sponsors suggested that this would be consistent with the powers of coastal states under Article 221 of the United Nations Convention on the Law of the Sea 1982 (UNCLOS) and would fill gaps in the existing international law. Attached to this joint submission was a first draft of a wreck removal convention. The current instrument has developed from that.

In this context I should mention that the CMI became actively involved in 1996 (3 years after the topic entered the Legal Committee programme). A small International Working Group was set up under the chairmanship of Bent Nielsen (Denmark) to study the DWRC. A questionnaire was prepared and circulated to CMI national maritime law associations. Based on responses to the questionnaire the IWG prepared and submitted a report to the 74th Session of the Legal Committee (October 1996). This report commented on the DWRC based upon the knowledge of national wreck removal laws which it had acquired from responses to the questionnaire. Significantly the report concluded that "the national regimes for wreck removal within territorial waters may have so many similarities that it would be possible to include these areas

within the scope of the WRC". (Remember that the draft only related to international waters.) The report also noted:

> "Since the majority of wreck removal cases will relate to wrecks within the territorial sea, it would be important to maintain widespread international unification of the rules governing such wrecks… the unification would be much more complete, if the WRC by itself was applicable also to national waters, but permitted a state party to exempt such waters from its application."

i.e. a universal wreck removal law covering both territorial and extra-territorial waters – with an opt out for territorial waters. I will return to this issue.

But let's forget about the starting point and look at the draft instrument as it currently exists. In the initial submissions leading to the drafting of the convention, the sponsoring nations highlighted the problems which they were encountering with wrecks located outside their territorial waters. All three sponsoring nations were concerned about such wrecks to the extent that they created (i) navigational problems for vessels visiting their ports or (ii) represented a pollution or other threat. They asserted that they were powerless to deal with such wrecks under existing national laws.

The draft Convention

It would be extremely boring if I were to simply take you through the provisions of the current draft. I think that it might be more interesting if we were to place ourselves in the position of the governments of the three principle sponsoring states, Germany, UK and The Netherlands, when faced with a wreck representing a threat to navigation or to the environment or otherwise. So how would we, as lawyers, guide government officials in those three states and what powers would we advise them that they have under the current draft?

Attached to the latest draft instrument is a diagram or flow chart designed to guide state parties through the intended application convention. I'm not convinced that this flow chart follows a logical sequence as I will demonstrate.

Reporting

Logically, the first provision of the Convention which will operate is to be found in Article 6. As currently drafted this places an obligation on the master and the operator of a ship to report that a maritime casualty has occurred and that the vessel has become a wreck as a consequence. It has been suggested that the obligation to make a report should be extended to the registered owner and we shall learn in due course whether this proposal is to be accepted. In the meantime, one can see the logic in placing the obligation to report on the master and on the company responsible for operating the ship. The master and the operator are obligated to report the casualty and the wreck to the "Affected State". This may sound a curious concept but it is defined in Article 1 as "the State in whose Convention area the wreck is located". The CMI suggested that the term "coastal state" might be more descriptive and conventional but this

suggestion has been rejected since "coastal state" has a specific meaning under existing public international law.

Article 6 also contains a list of the information which should be supplied to the Affected State. This includes full particulars of the vessel concerned, its location, the nature of the damage suffered, the nature and quantity of cargo with specific reference to types of cargo oil, bunker and lubricating oil on board.

(It remains possible that no report will be received and a state will simply become aware of the existence of a wreck from other sources. In such a case the flow chart will start at the second stage – determination of whether the wreck is within the Convention Area.)

Convention Area

It will then be necessary to determine whether the reported wreck is located within the area covered by the Convention. Article 1 of the draft Convention defines what it calls the "Convention area" as being the exclusive economic zone (EEZ) of a state party. Because not every state has an established EEZ the definition of "Convention area" is extended, for such states, to include an area "beyond and adjacent to the territorial sea" but not extending more than 200 nautical miles from the coast. So, as long as the wreck is within the Convention area, the Convention applies.

But what if our government officials conclude that the wreck is in fact within territorial waters? As currently drafted, the convention would not apply but national domestic law would. You will recall that in 1996 the CMI recommended that careful consideration should be given to making the convention applicable within territorial waters and the EEZ but giving states the option to exempt territorial waters from the "convention area" if they so wished.

Until LEG90 in April 2005, Article 3(2) gave state parties the right to declare that the convention or certain Articles "shall apply to wrecks located within its territorial sea" i.e. an "opt in".

For reasons which I am at a loss to explain, this option was removed following discussions at LEG90. Unless this option is restored the convention will only apply outside territorial waters but within the EEZ.

The UK government has recently taken up this issue and circulated a paper to members of DWRC Correspondence Group proposing that state parties should be given the option to apply within their territorial waters "those provisions relating to liability and compensation". In my view, and in the overall interests of international harmonisation, state parties should only have the option to apply the whole convention within territorial waters not just bits. The "all or nothing approach". Behind the UK's proposal is a clear and understandable desire to maintain existing wreck removal laws applicable in UK waters and graft onto these the compulsory insurance provisions of the DWC.

Is it a "wreck"

Logically, the next question must be to consider whether the sunken or stranded ship is a "wreck" within the convention. The definition of wreck has been the subject of endless debate at every legal Committee meeting. We have ended up with a definition which includes sunken or stranded ships or any parts thereof as well as bits of ships and things washed off ships including cargo. In order to deal with the problem of a floating, drifting hulk, the definition of wreck is extended to include a ship which is afloat but which is "reasonably… expected, to sink or to strand". This, however, is subject to the rider that it is not a wreck if "effective" salvage services are under way. The use of the word "effective" is to preserve the right of a state party to intervene if it is not satisfied that the services of a professional salvor are achieving the prompt removal of a wreck. The Legal Committee was alerted to the rights acquired by a salvor in possession which would make any form of state intervention in a wreck removal potentially hazardous.

Warships and state owned non-commercial vessels are placed outside the terms of the Convention.

So now that our government officials have established that they are dealing with a wreck and that it is within the Convention area, they will need to examine what further rights and obligations arise.

Warning

Logically, the next step is dictated by Article 8(1) which requires the Affected State to warn mariners and other coastal states concerned of the nature and location of the wreck. It seems that this obligation to give warning of the existence of the wreck arises very early in the sequence of events. It only needs for the Affected State to become aware of the existence of a wreck within the Convention Area (regardless of whether they have received a report from the master or operator of the ship) for the obligation to arise to warn others of its existence.

Is it a "hazard"

The next logical phase, so far as the government officials of the Affected State are concerned, is to determine whether the wreck represents a hazard to their coast. If it is determined to be a hazard, then all sorts of other rights and obligations arise. If it is not a hazard then the rights and obligations provided in the Convention do not apply.

Again, many hours of debate have been devoted to the definition of "hazard". The resulting definition is not elegant but may serve. I quote:

" "Hazard" means any condition or threat that:

a) it poses a danger or impediment to navigation; or

b)may reasonably be expected to result in major harmful consequences to the marine environment or damage to the coastline or related interests of one or more states;"

This suggests that an immediate or prospective danger to navigation or of

pollution will represent a hazard so as to trigger various other rights and obligations under the convention where the existence of a hazard is a pre-requisite.

So let's assume that our government officials are still with us, what do they need to do to determine whether the wreck represents a hazard? In this context they would need to look at Article 7 which is entitled "Determination of hazard". Article 7 lists the factors which should be taken into account by an Affected State in determining whether the wreck represents a hazard. Most of these factors are pretty obvious such as the size, type and construction of the wreck, the depth of the water, the tidal range and current, proximity to shipping routes, traffic density, nature of the cargo carried, the meteorological and hydrographical conditions, height of the wreck above or below the surface of the water, the proximity of offshore installations and ecological sensitivity of the area.

Rights and obligations of states

Assuming that our government officials, having studied these factors, determine that the wreck does represent a hazard then all sorts of further rights and obligations come into play.

For example, if the wreck is determined to constitute a hazard the Affected State has an obligation to ensure that "all reasonable steps are taken to mark the wreck" in conformity with the internationally accepted system of buoyage. There is a further obligation on the Affected State to publish, for the benefit of all mariners, particulars of the marking of the wreck. (Article 9)

Wreck removal

This brings us by a series of logical steps to the next, and most important, aspect of the convention, that is wreck removal itself. This is dealt with by Article 10 which bears the rather curious title "Measures to facilitate the removal of wrecks". Perhaps "wreck removal" would be good enough.

Rights and duties conferred by Article 10 only apply if the Affected State has determined that the wreck constitutes a hazard. Once the Affected State has so determined it is then obliged to inform the state of the ship's registry and the registered owner that the wreck has been deemed a hazard. Having done that the Affected State is obliged to inform the state of the ship's registry and consult with that state and other states affected by the wreck regarding the measures to be taken.

The reference to "other states affected by the wreck" raises, for the first time, the problem which is likely to arise in European coastal waters and also in the Baltic and Mediterranean where several states may, potentially, be affected by the existence of an offshore wreck. This explains the Article 10 obligation placed on the Affected State to "consult… other states affected by the wreck". It is also why, in defining Affected State it was decided to give the state in whose convention area the wreck is physically located the lead role in dealing with it, even though, in practice, it may turn out that the wreck is more of a threat to a state other than the one in which the wreck is located.

Going back to Article 10, we find set out the obligations placed on the owner of the ship following the wreck of his ship and the determination that it represents a hazard. Article 10(2) states that:

"The registered owner shall remove a wreck determined to constitute a hazard."

A clear statement if ever there was one.

Further, Article 10 recognises that the owner may enter into a contract with a salvor to perform the wreck removal operation but permits the Affected State to lay down conditions for such removal but "only to the extent necessary to ensure that the removal proceeds in a manner that is consistent with safety and environmental considerations". This limitation on the powers of an Affected State to intervene were in recognition of the fact that a "salvor in possession" has certain rights with which a state would interfere at its peril.

Article 10(5) extends this limited right of intervention by the Affected State to the period of the services themselves.

The Affected State can also set deadlines and impose conditions upon the owner in relation to the wreck removal operation. If any deadline imposed is not met the state may undertake the removal itself and charge the owner with the cost.

In the event that the Affected State believes that immediate action to remove the wreck is necessary and it has informed both the state of the ship's registry and the owner of the immediacy of the need for wreck removal, it may undertake the work forthwith and charge the owner. Article 10 also imposes an obligation on state parties to ensure, through national law, that the owners of ships flying the state flag comply with the wreck removal obligations imposed by Article 10.

We have seen that Article 10 imposes direct duties on the registered owner and also confers wide powers on the Affected State to deal with a wreck in the Convention Area.

Article 2 imposes certain restrictions on state parties and we would need to alert the governments, which we are advising, to these restrictions.

Measures taken by an Affected State must be "proportionate to the hazard" – what that would mean in practice, is not clear, but would, no doubt, be subject to judicial interpretation.

"Such measures shall not go beyond what is reasonably necessary to remove a wreck…" In exercising rights under the convention the Affected State "shall not unnecessarily interfere with the rights and interests of other states… and of any persons,… concerned."

State parties are warned not to claim or exercise sovereignty or sovereign rights over any part of the high seas".

Finally, Article 2, requires state parties to "endeavour to co-operate when the effects of a maritime casualty resulting in a wreck affect a state other than the Affected State".

(At best this must be treated as a mere exhortation rather than an obligation breach of which has unspecified consequences.)

So these provisions are meant to be a warning to Affected States to exercise the powers conferred by the convention in a reasonable and considerate fashion.

Financial obligations

Fundamental to the thinking of the states which sponsored this convention was the need to know that in every situation where wreck removal is required there will be financial resources available to pay the wreck removal expenses. Article 11 deals with what those financial obligations are and Article 13 imposes obligations on the registered owner of the ship to carry the necessary liability insurance (or other financial security) to cover wreck removal expenses.

So what are those financial obligations? Primarily, the registered owner is liable for the costs of locating, marking and removing the wreck. (There are limited circumstances, with which we are all familiar from the CLC and other liability conventions, in which the owner will not be liable for such expenses (war hostilities etc)).

Article 11(2) expressly preserves the right of the registered owner to limit his liability by reference to the 1976 LLMC (as amended). In this context it is not uncommon to find that, as in the UK, states parties to the 1976 Limitation Convention have exercised the right to make a reservation in relation to wreck removal expenses with a result that shipowners are unable to limit in respect of wreck removal claims.

I couple Article 11 with Article 13 because it is in Article 13 that we find, as mentioned earlier, the obligation imposed on the registered owner to "maintain insurance or other financial security…to cover liability under this Convention in an amount at least equal to the limits of liability for the ship calculated in accordance of Article 6(1)(b) of the LLMC 1976 (as amended)".

One consequence of this is that even though under, for example English law, the registered owner cannot limit in respect of wreck removal expenses his obligation under the Wreck Removal Convention will be to carry liability insurance only up to the amount of the limit.

I need not go in any great detail into the rest of Article 13 which will be familiar in its form to those who know the CLC, the HNS Convention, the 2002 Protocol to the Athens Convention and other conventions which impose an obligation on a shipowner to carry insurance or provide other form of financial security. Two points only to be made. Firstly, Article 13(11) enables the claimant to seek compensation due under the Convention directly against the insurer or other person providing financial security for the registered owner's liability. Secondly, the insurer, if sued direct, may invoke the defence that the casualty which resulted in the wreck, was caused "by the wilful misconduct of the owner himself". This again is a reservation with which we are accustomed from the HNS Convention etc.

Restrictions on scope of Convention

There remain one or two other provisions which we should look at.

The drafters of the Convention were conscious of the fact that some of the powers granted to governments were already available to those governments under other Conventions. For example, the CLC, the HNS Convention, various Nuclear Conventions and the Bunker Oil Pollution Convention of 2001 all

confer rights on states when casualties occur. To the extent that there is a conflict between the Wreck Removal Convention and these Conventions it is provided by Article 12 that the registered owner shall not be liable for the cost of locating, marking and removing the wreck "…if, and to the extent that, liability for such costs would be in conflict with…" the Conventions mentioned above.

The wording of this exemption is somewhat curious but the intended effect seems to be that the Wreck Removal Convention is to be subsidiary to the rights given by the listed Conventions.

Time limit

Article 14 provides that rights of compensation are extinguished unless action is brought within 3 years of the "hazard has been determined" or maximum 6 years from the maritime casualty which gave rise to the wreck.

The Future

So what more remains to be done? Time has been allocated at the next two IMO Legal Committee meetings in April and October this year to finalise the text of the Wreck Removal Convention. It is then anticipated that it will go to a diplomatic conference for final approval some time in early 2007.

There remain areas of the Convention which need to be improved. One area that is causing difficulty relates to the inter-relationship between the rights and obligations of the owner, the registered owner and the operator of the ship. This all arises from the fact that when seeking to recover the costs of wreck removal it is important for all liabilities to be channelled to one individual or company and it is that individual or company who should then be required to obtain the insurance or other financial security. However, following a casualty, the Affected State will not, immediately, be particularly interested in the registered owner if the ship is operated by somebody other than the registered owner. With current ship operating practices it is very unlikely that the registered owner will also be the day-to-day operator of the ship. This and other aspects of the DWC identified earlier require further work.

A WRC would – along with other Conventions already in existence – give added comfort to a state which has been requested for a place of refuge for a ship in distress.

F. MARINE INSURANCE

REPORT OF THE CMI STANDING COMMITTEE

BY JOHN HARE

The Vancouver Conference in September 2004 saw the closing report of the Marine Insurance Working Group that had researched issues of marine insurance since 1998. In that report[1] I confirmed that, notwithstanding the disbanding of the Working Group, the CMI would continue to have a standing committee on marine insurance tasked with monitoring marine insurance laws and especially national reform initiatives.

At its Paris Exco meeting in April last year which I was unfortunately unable to attend, the CMI Council asked Dr Tom Remé to convene a standing committee comprising Dr Remé as acting chair, Dr Sarah Derrington of the University of Queensland in Brisbane, Mr Christian Hübner of Axa Insurance Co in Paris, and Mr Ed Catell of Holstein Keating in the USA. I was asked to serve on and take charge of the committee and I have agreed to do so, as always with the redoubtable Tom Remé at my side. I am happy to confirm that Prof Dr Marc Huybrechts and Prof Rhidian Thomas have agreed to join the Committee.

Sadly, none of the other marine insurance standing committee members was able to journey to Cape Town, but they have reported in to me and we hope to be able to carry on our work during the coming year with email contacts. Christian Hübner confirms that the French MLA is represented here for marine insurance matters by Henri Najjar.

The Research of the Marine Insurance Working Group

Because many of the delegates here in Cape Town were not at previous CMI conferences and colloquia, it may be useful to give you a short précis of the what the Working Group set out to achieve, and then in hindsight take a quick look at what was actually achieved by the group.

You will all know that there is in modern times, a divide between marine insurance as practised in the common law countries and that of the civilians. To an extent (and this was perhaps one of the lessons learned during our work) that divide is perceived as a market edge. If you are negotiating renewals, you are likely to have English brokers knocking at your door selling an IUA London 2003 Hull policy,[2] Scandinavian brokers punting for the Norwegian Marine

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[1] CMI Documentation Vancouver II p 248.

[2] The IUA 2003 terms are available, with the permission of the International Underwriting Association in London, on the UCT Shipping Law site at www.uctwhiplaw.com/fulltext/ian/-iuaintro.htm.

Insurance Plan, and perhaps a Belgian in the background waving a Corvette policy. They will not be trying to sell you a standardised policy under a uniform system of law. Each will aver the superiority of his or her own policy and the law under which it is written – though perhaps they will gloss over differences of interpretation arising out of jurisdictional idiosyncrasies.

It was precisely that divide, which was seen to be growing rather than narrowing, that motivated a call for a CMI study of marine insurance by Lord Mustill in 1998. At that time, some of the English satellite marine insurance jurisdictions, notably Australia and New Zealand, South Africa, Hong Kong and China, and indeed also the United States were talking marine insurance reform. Australia prepared a most comprehensive and useful report, and a draft Act. The USA talked in some quarters of an Act or perhaps a Restatement. South Africa has had a draft Act based on the UK Act for more than a decade. It seemed that marine insurance law was set to diverge further.

The call for reform was in fact nothing new, though it was directed mainly at those jurisdictions that followed English law. The English Law Commission report of 1980 threw down the gauntlet to lawyers to remedy undoubted injustices arising from non-causative and trivial breach of warranty. This call was taken up by many, including Lord Longmore at the Donald O'May lecture in 2003.[3]

Across the channel, our civilian colleagues did not share the same dissatisfaction with their own marine insurance law. And where anomalies existed, they were corrected. The EU market was content to put its own house in order. Scandinavia had already completed its most successful contractual restatement of the law of marine insurance in the Norwegian Plan (which is not legislation as such, but which is incorporated into marine insurance contracts by agreement between the parties).[4]

But the common law countries were, and in fact still are, underwriting under the influence of Sir McKenzie Chalmers 1906 Act. And that Act, remarkable as it is for its longevity, was as much a crossroad as it was a bridge across the channel. A bridge across the common law/civilian divide of the channel, because the 1906 Act drew so much on both the English and continental civilian English court judgements and writings. And yet a crossroads because the 1906 Act entrenched certain substantial differences that had already begun to distinguish English marine insurance law its continental counterpart. Good faith, abandonment, total, partial and constructive total loss, subrogation and of course the dreaded English marine insurance warranty took a very different road.

The divisiveness of the 1906 Act is seldom recognised in view of the broad acceptance of the Act as the blueprint for English policies for over a century. And the 1906 Act, through its relative clarity (for its time) and its sheer longevity, is criticised only by the very bold. But problems had already been

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[3] See also my own writings about the warranty *The Omnipotent Warranty: England v The World* at www.uctwhiplaw.comimicfram.htm

[4] The Norwegian Marine Insurance Plan is at www.norwegianplan.no

recognised even before the Act came into effect in 1906 (having lain on the legislative table for long years while the British Government was otherwise occupied fighting the rebels of South Africa). In 1901, the International Law Association held a conference at Glasgow which culminated in the adoption of the Glasgow Marine Insurance Rules. The objects of the Glasgow Conference are surely relevant to us, a century later:

> *The object in view has been to find a mode of bridging over the differences which exist in marine insurance law in the different States – a method by which a policy of insurance may have the same legal effect whether it is made in Belgium, France, Germany, the United States or in England. And the proposal is to have a body of rules, covering those portions of the law on which the principal divergences occur, which may be adopted as the fundamental law of the policy by express incorporation in it.*[5]

One is moved to ask "What has changed"? For this was precisely the brief of the CMI initiative. And the CMI Working Group, like the ILA, also realised that it had to limit its brief to certain more pressing issues of marine insurance law where there is a particular divide between the common law and the civilians:

– The duty of good faith
– The duty of disclosure
– Alteration of Risk; and
– Warranties

The Working Group began by sending out the customary CMI Questionnaire. The replies were collated and reports drawn up by the group members. Notable for her industry and output was Prof Trine-Lise Wilhelmsen of the Institute of Maritime Law in Oslo.

So extensive, and I suggest useful to future debate, is the documentation produced, that we have decided to make it available on a CD as a CMI publication. This should be achieved in the near future.

The group met with roleplayers in the market, mindful always that it is the industry and its consumers that the law should serve. One criticism was that the Group played too much to the English common law audience, and not to the civilians. This was fair criticism, but it reflected also the central fact that it is English law (by which I refer to the law of the UK and all the English law satellite jurisdictions) that is probably in the most need of reform.

And with its studies done, the Group had then to decide what recommendations to make. We had long realised that any form of international instrument along the lines of the Hague Visby Rules would be inappropriate. We had accepted also that if, at the end of the day, the exercise proved to be mainly academic, nothing would have been lost. But we considered also the possibility

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[5] Taken for the proceedings of the conference and the text of the Rules issued by the International Law Association in 1901. Attempts for many years to source this document led finally to the location of the records of the ILA by Mr Michael Marks Cohen, who kindly provided me with a copy for which I am most grateful. The Rules covered loss, abandonment, double insurance and the warranty of seaworthiness.

of a set of guidelines which could inform (but not dictate) national reform initiatives, especially of those countries that followed English law.

The draft guidelines

It was against that background that I set about preparing for the Vancouver conference what I described there as a wishlist of how I would like to see marine insurance law reformed. It was and remains a rather personal wishlist, because it was not a document prepared by the workgroup, and there are some members who, though generally supportive of it, would prefer what Prof Malcolm Clarke calls 'virtuous inactivity'.

Since Vancouver, with the regrouping of the Standing Committee, there has been little progress from our side. I have been out of the CMI loop for the past year, for personal reasons, but I am happy to revive the initiative and to explore again the commonality that does remain in the approaches between the common lawyers and the civilians. The guidelines, as a discussion document only, are on the conference website. I would much appreciate comment on them from anyone interested in contributing to the debate.[6]

Report-back on national developments

2005 seems to have been a year marked largely by 'virtuous inactivity' on the marine insurance front. The developments (or lack thereof) reported to the committee are:

(a) **Australia**

Sarah Derrington reports that "the draft Bill, prepared by the ALRC, has still gone nowhere and there is no indication that anything will happen in the foreseeable future". As Sarah points out, it would be a great pity if the work of the ALRC came to naught.

(b) **France**

Christian Hübner reports that there is a revision of Art 126-2 of the French code dealing with terrorism. The measure will apply to new contracts and renewals after July 24th 2006, but there seems some doubt as to its application to aviation and marine business.

(c) **Germany**

Tom Remé reports that the previous German government had issued a draft for a reform of the Insurance Contracts Act of 1908. That Act does not currently apply to marine insurance, which is regulated under the Commercial Code. The rules found in the code are, according to Dr Remé, not strict, and have long been replaced contractual agreement. The new draft Insurance Contracts Act would, however, apply to marine insurance, but it may still be contracted out.

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[6] The draft guidelines on Marine Insurance Reform are also on the UCT Shipping Law website at www.uctshiplaw.com/assign2005/marinsure.htm, with a selection of comments prepared as an assignment by some of the UCT Shipping Law 2005 LLM students from various countries.

Tom reports though that with the change in government, "it seems unlikely that the reform of marine insurance will be finalised soon."

(d) **The USA**

Ed Catell, who for some years chaired an MLA committee studying the possibility of a US Federal Marine Insurance Act based on the UK Act) and who was a committed reformist, reports that he sees the prospect of change in marine insurance law at present as "zero". He has undertaken to report from time to time on developments in marine insurance law, which, per Wilburn Boat, will no doubt vary from state to state.

Graydon Staring, however, as a closing stroke to his sterling service on the CMI International Working Group, published a most interesting and informative article in Benedict's Maritime Bulletin.[7] I would commend that article to anyone interested in taking marine insurance reform further. It is perhaps the best summing up of the work of the group, yet at the same time, it is the most practically critical. Mr Staring appeals for the continuation of the IWG's work in seeking practical solutions, largely within the market, to the problems which the IWG identified. The only aspect upon which I take issue with Mr Staring is that it has always been my view that lawyers have an obligation to change laws that they recognise to be unjust. As are some aspects of English marine insurance law. I do not believe that it is sufficient to leave bad laws be, and allow the market to correct their effect.

(e) **South Africa**

South Africa enjoys a rare jurisprudential privilege of having a legal system that has drawn on both the common and civilian law over the 350 years of its recent history. Its 'fall-back' regime of law remains the Roman-Dutch 'common law' based on the civilian laws practised in Holland in the 18th century, yet growing constantly from indigenous judge made law and the influence of appropriate foreign law. It has a large English law content, and largely English procedures. Its commercial laws are becoming increasingly codified.

For historical reasons, it never adopted the 1906 Act, though English law was applied directly in the Cape and Natal for nearly a century. But much marine insurance is written subject to present-day English law by contractual choice.

Attempts have been made for a decade to prepare a redraft of the 1906 Act which will cater for some of the differences between English law and the residual Roman Dutch law from which English law diverged after Chalmers' 1906 Act. These attempts were orchestrated mainly by the SA Association of Marine Underwriters, but there has as yet been no resolve, nor is any further development presently on the horizon.

What has happened is that, as seems to be a trend in other parts of the world (for example in Germany) non-marine insurance legislation has been extended to apply to marine insurance. South Africa has a Short-Term Insurance Act,

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[7] Staring *The CMI Looks at 'Marine Insurance Law* was published in Benedict's Maritime Bulletin,Vol. 2, No. 3, Third Quarter 2004.

which includes marine insurance as 'transportation insurance' and which regulates certain issues. Most concern formality, but there is a significant section that deals with disclosure and misrepresentation, and which, since a 2002 amendment, now regulates also that materiality relating to non-disclosure and misrepresentation will be assessed by objective criteria.[8]

(f) **The UK**

Perhaps the most welcome support that the IWG had was from the London market. The 2003 IUA terms were, I am told, much influenced by the input of the IWG – and it is perhaps there that the lead may be found for the way forward. If the CMI continues to research and inform, then the markets (and perhaps even the courts) can use that input to assist their own reform processes. We cannot stress enough that reform is impotent if it is not embraced by the market.[9]

And the IUA 2003 policy reforms reflect also the focus that the CMI has tried to maintain on promoting a harmonisation of marine insurance laws that will take cognisance of the dictates of maritime safety. One of the cornerstones of maritime safety since the beginning of shipping has been, and should always be, seaworthiness.

But all is not virtuously inactive in the UK: I am happy to see that at the Swansea Colloquium convened by Prof Rhidian Thomas last year, one of the topics was "The Marine Insurance Act 1906 – Judicial attitudes and innovation: Time for reform?" and indeed that the papers of the colloquium are soon to be published under the title "Marine Insurance: The Law in Transition". Prof Thomas has kindly agreed to report to us on the Swansea colloquium and on current developments in the UK.

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[8] The new section makes the objective standard applicable to misrepresentation, which was previously assessed subjectively. It reads (emphasis added):

(1) (a) Notwithstanding anything to the contrary contained in a short-term policy, whether entered into before or after the commencement of this Act, but subject to subsection (2)-

(i) the policy shall not be invalidated;

(ii) the obligation of the short-term insurer thereunder shall not be excluded or limited; and

(iii) the obligations of the policyholder shall not be increased, **on account of any representation made to the insurer which is not true**, or failure to disclose information, whether or not the representation or disclosure has been warranted to be true and correct, unless that representation or non-disclosure is such as to be likely to have materially affected the assessment of the risk under the **policy concerned** at the time of its issue or at the time of any renewal or variation thereof.

(b) The representation or non-disclosure shall be regarded as material if a reasonable, prudent person would consider that the particular information constituting the representation or which was not disclosed, as the case may be, should have been correctly disclosed to the short-term insurer so that the insurer could form its own view as to the effect of such information on the assessment of the relevant risk.

[9] The IUA has all but removed reference to the English 'warranty' from the hull clauses. The navigational limits and seaworthiness clauses are no longer referred to as a warranty, and the consequences of breach are now spelled out – in a way similar to the change of class/management clauses. The effect of a breach of these essential clauses is now *suspension* of cover for the duration of the breach (even in relation to loss or damage not caused by the breach of warranty) but cover is restored on remedy of the breach.

Conclusion

As mandated by the CMI Council, the Standing Committee will continue to maintain watch on marine insurance developments within member states. To that end, we will be asking for a marine insurance spokesperson for each country from whom we may from time to time ask for reports in order to send them through to the full CMI membership. The success of our work will depend largely on our being kept informed by you, and we would be most happy to hear from you.[10]

[10] You are welcome to email any of the Standing Committee members who are
Dr Thomas M. Remé tundereme@t-online.de
Mr Ed Catell ecatell@hollsteinkeating.com
Dr Sarah Derrington s.derrington@law.uq.edu.au.
Mr Christian Hübner Christian.hubner@axa.fr
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Prof Rhidian Thomas rhidian@mountnessing.u-net.com
Prof John Hare shiplaw@iafrica.com

G. UNCITRAL DRAFT CONVENTION ON THE CARRIAGE OF GOODS

PRESENTATION

BY STUART BEARE

In December 2001 the CMI handed to the UNCITRAL Secretariat a draft Instrument on Transport Law.[1] The UNCITRAL Secretariat had been asked to prepare a preliminary working document containing drafts of possible solutions for a future legislative instrument with alternatives and comments. This task was in effect outsourced to the CMI. The CMI draft was this preliminary working document. It was prepared by the International Sub-Committee on Issues of Transport Law, under my chairmanship, in accordance with the decisions on the main issues made at the Singapore Conference in February 2001, and in the light of responses from national associations to a subsequent questionnaire.

The project was put on the agenda of UNCITRAL Working Group III on Transport Law. At its initial session in April 2002 the Working Group agreed to adopt the CMI draft as a basis for its deliberations. Also, at this initial session, the Working Group recognised that the purpose of its work was to end the multiplicity of liability regimes and to bring international maritime transport law up to date to meet the needs and realities of modern practices.[2]

Since April 2002, the Working Group has held seven more sessions, mostly of two weeks, and the CMI draft has been substantially revised. You may recall that it was left open in the discussions in the CMI what form the draft Instrument might take – perhaps it would be a convention, perhaps it would be a model law – so an Instrument seemed a fairly neutral description. However, it has now become a draft Convention and the current text is in Working Paper ("WP") 56.[3]

I am not going to give a detailed account of the deliberations at all the sessions (that can be found on the CMI website), nor am I going to go through the individual chapters and articles. I do however think that this is a good moment to take stock of the present position and to see to what extent the basic principles, on which we agreed five years ago in Singapore, have been carried forward into the draft Convention, and where major changes have been made. But before I do so, I would like briefly to mention the UNCITRAL procedures. At the initial session in April 2002, the Working Group generally reviewed the themes of the CMI draft, one of which, door-to-door transport, I will come back to in a moment. The Working Group then began its first reading and went

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1 Published in Yearbook 2001 Singapore II at p. 532-597

2 See A/CN.9/510 para. 22

3 See A/CN.9/WGIII/WP.56

relatively quickly through all the articles at this initial session and the subsequent two sessions. Following this first reading, the Secretariat produced a new draft, WP.32,[4] which took in the changes the Working Group had already decided to make and included a number of alternative draft articles or variants for further consideration. These alternatives reflected points made on the first reading.

In November 2003, the Working Group began its second, much more detailed, reading of WP.32, beginning with what were thought to be the core issues. The variants are being eliminated and the second reading will result in a text of most of the articles being agreed as a basis for a final draft. The second reading will not be completed at least until this November, but for convenience, and to begin the task of checking the text for internal consistency and conforming it to UNCITRAL house style, the Secretariat produced an up-to-date interim draft last September, which is WP.56. It is expected that another interim draft will be produced this summer to take account of what was decided at the session in Vienna in December and what will be decided at the forthcoming session in New York in April.

One of the core provisions of any carriage convention is the liability regime, and the Working Group recognised at the outset that ending the multiplicity of existing regimes was one of its principal objectives. The CMI draft contained a general statement of a fault-based liability of the carrier for loss of or damage to the goods, and for delay. It then included the traditional list of exceptions, including nautical fault and fire, and alternative provisions for apportioning liability to deal with concurrent and consecutive causes of damage. The carrier was to be liable for delay when the goods were not delivered within the agreed time, or, provisionally, within a reasonable time. At Singapore there was considerable support for eliminating the nautical fault defence and there was widespread support for including liability for delay when the goods were not delivered within an agreed time. Views were fairly evenly divided about what should be the position when no time had been agreed.

The text in chapter 6 of WP.56, although much revised from that in the CMI draft, retains the catalogue of exceptions, including fire on the ship, but not nautical fault, and includes a provision for apportionment of liability. It also clarifies the alternating burden of proof between cargo and ship and ties in, which the CMI draft did not do, the carrier's obligations in chapter 5. As to these obligations, the obligation to exercise due diligence is retained, but the obligation continues throughout the voyage. This point had been left open in the CMI draft. As regards delay, the carrier is to be liable for not delivering the goods within a reasonable time if no time is expressly agreed upon.

The basic principles of the CMI draft are therefore retained, but the whole chapter is more structured (which is something we attempted in Vancouver) and the burden of proof has been clarified. The text in WP.56 could therefore be regarded as an improvement. Our President ad Honorem, Francesco Berlingieri, made a major contribution to the successful resolution of this whole issue by

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[4] A/CN.9/WGIII/WP.32

chairing the small drafting group which produced various texts for the Working Group to consider before the final text was agreed to be broadly acceptable.

The CMI draft included a reciprocal chapter detailing the obligations of the shipper. The CMI draft focused on the importance of the shipper providing correct information about the goods and no distinction was made between dangerous and non-dangerous goods on the grounds that the distinction was out of the date and the notion of "dangerous" was relative. It also provided for a fault-based liability with a reversed burden of proof. A minority in the CMI considered that the shipper's liability for the shipment of inherently dangerous goods, and for failing to provide accurate information, should be more stringent. Broadly, this minority view has carried the day in the Working Group. The shipper will be subject to more stringent liability for failing to provide accurate information, including failure to inform the carrier of the dangerous nature and character of the goods. A Working Paper will be prepared for consideration at the next session, setting out a revised text, which will take in the changes agreed in December.

The CMI Assembly in Singapore requested the International Sub-Committee, in particular, to include in the draft Instrument, provisions to facilitate electronic commerce and to cover the possibility that it should apply also to other forms of carriage associated with the carriage by sea (door-to-door carriage).[5] The CMI draft accordingly provided that the period of the carrier's responsibility should be the period from the time of receipt of the goods to the time of delivery. Receipt and delivery may take place at inland locations and consequently the carrier would be responsible during inland carriage, unless it was agreed that, for a specified part or parts of the carriage, the carrier would only act as agent to arrange carriage by another carrier. This exception, as was agreed in Singapore, permits through transport, and the possibility of through transport is maintained in WP.56 in article 12. This article will however require further consideration as currently WP.56 contains two alternative texts. The problems created by other mandatory conventions applying to inland transport, for example the CMR, were dealt with by an article setting out a limited network system. This again was the system agreed on at Singapore.

As I mentioned earlier, the door-to-door application of the draft Instrument was debated at the initial session in April 2002 and it was debated again, at length, in New York in March/April 2003.[6] It was then agreed to retain the limited network system and the Secretariat was instructed to prepare a conflict of conventions provision, which is now article 89 in WP.56. There was broad acceptance, which reflects the debate in Singapore, that a uniform system was unattainable. It was also felt that no attempt should be made to establish in the draft Instrument the ancillary character of the land carriage. It was generally felt that the only practical way of addressing that aspect was to decide that multi-modal carriages involving a sea leg should be covered, irrespective of the relative duration of or distance involved in that sea leg.

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5 See Yearbook 2001 Singapore II p. 188

6 See A/CN.9/526 paras. 219-267

So WP.56 reflects the principle set out in the CMI draft. But I would add, so far so good. It is not impossible that this issue may come back onto the table in some form or other and the question of mandatory national law, which was left open in the International Sub-Committee, has not yet been finally decided. Moreover, the words "wholly or partly by sea" in the title of the draft Convention remain in brackets.

Facilitating the needs of electronic commerce has been easier to deal with in the Working Group. The provisions in the CMI draft, which were largely prepared by the E-Commerce Working Group under Johanne Gauthier's chairmanship, have substantially withstood the Working Group's scrutiny. In fact they have not been extensively debated because the Secretariat set up an Experts' Group consisting of experts drawn from UNCITRAL Working Group IV on electronic commerce and Working Group III, which Johanne Gauthier and Bob Howland attended. This Group suggested some revisions to WP.32. These revisions were substantially accepted by the Working Group in New York last May and are now contained in WP.56.

The CMI draft contained a number of chapters which covered topics which were not covered by international conventions. This arose out of the original brief from UNCITRAL and the terms of reference of the International Sub-Committee. All these chapters, with one exception, remain in WP.56. However, the Working Group has not yet been able to consider these chapters on the second reading and, although there has been an exchange of views in the informal correspondence group, it is too early to take stock of how the original CMI draft on these topics will survive. The one casualty is the chapter on freight. The Working Group has deleted it because the majority considered it to be a non-mandatory regulation which dealt with commercial matters.

That concludes my stocktaking of the topics included in the CMI draft. I now want to mention three topics which were not included in the CMI draft, but which are included in the draft Convention in WP.56. The first is jurisdiction. We did not include any provisions on jurisdiction and arbitration in the CMI draft, largely because, in the timescale to which we had to work after Singapore, it was not possible to introduce new topics, which were bound to be controversial, beyond the topics which the International Sub-Committee had agreed at the outset should be covered. It was also not clear at this stage what form the Instrument would eventually take. At the initial session in April 2002, the Working Group decided that provisions on jurisdiction and arbitration would be useful, and some delegates thought they were indispensable, and the Secretariat was instructed to draft provisions based on the Hamburg Rules.[7] Such provisions were included in WP.32 and the CMI reviewed them at the Vancouver Conference. The almost unanimous conclusion in Vancouver, although perhaps bowing to the inevitable, was in favour of jurisdiction provisions being included. It was also unanimously agreed that *lis pendens* rules should be omitted. This point has been accepted by the Working Group.

Jurisdiction has been considered by the Working Group at its last three

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[7] See A/CN.9/510 para. 61

sessions. Finally, at the sixteenth session in Vienna in December, a new text of Chapter 16 was put forward jointly by the EC and the US. I should explain that the member states of the EU have delegated competence to negotiate jurisdiction clauses to the Commission. Consequently these states cannot, strictly speaking, put their own views forward in the plenary sessions. They do this in closed meetings of delegates from the EU member states, when they agree the mandate to be given to the Commission delegate. The draft put forward by the EC and the US was discussed and a revised draft, in which Japan and Norway joined as joint proposers, was prepared. Broadly, the revised draft was accepted and the new text is published in the report of the Vienna session.[8]

The permitted places in which a suit against the carrier may be brought – the places of receipt and delivery of the goods, the ports of loading and discharge and the defendant's domicile – were not particularly contentious. The main debate has been over the treatment of choice of forum clauses, including whether or not they should be upheld if they purport to be exclusive, and whether they should be binding on third parties. Broadly it has been agreed that the chosen court will have non-exclusive jurisdiction, but it will have exclusive jurisdiction if the agreement is contained in a volume contract, subject to certain specific conditions, and it will be binding on a third party if that party receives adequate notice and the chosen place is one of the specified places in which suit may be brought. There is, however, an important additional provision which permits contracting states to give effect to a choice of court agreement that does not meet the criteria I have mentioned, but such a contracting state must file a notice with an outside body to this effect. I commend a detailed and careful study of these provisions. The Working Group will re-visit them at its session in November.

As regards arbitration, it was agreed at the Vancouver Conference that the draft Instrument should contain some provisions, but there was no consensus as to what they should be. This lack of consensus is mirrored in the Working Group. There are three principal strands of opinion. One is that arbitration is a consensual process and that the principles of party autonomy should apply; the Convention should simply recognise the parties' right to agree to arbitrate. This approach is summarised in a Working Paper submitted by the United Kingdom as WP.59.[9] Another strand is that the arbitration provisions should largely mirror the provisions on jurisdiction, so that arbitration is not used as a way of getting around them. This approach is summarized by the US in WP.34.[10] The third strand is that allowing courts to declare that an arbitration agreement entered into in good faith will not be binding is not only unusual in trade law, but is contrary to the basic arbitration principles, as contained in the New York Convention and the UNCITRAL Model Law. It was therefore suggested that the opinion of Working Group II on arbitration should be sought. The outcome of the debate in December was that a compromise, based on the compromise

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8 See A/CN.9/591 para. 73
9 A/CN.9/WG III/WP.59
10 A/CN.9/WGIII/WP.34

originally put forward by the Netherlands, was agreed and Denmark, Japan and the US joined the Netherlands in making the final drafting proposal. In short, arbitration clauses in contracts of carriage in non-liner transportation will be enforceable. In liner transportation, the claimant may institute court proceedings in one of the prescribed places, or arbitration if there is any arbitration agreement, and the carrier may only enforce an arbitration agreement as exclusive in the same way as it could enforce a choice of court agreement. Again, I commend careful and detailed study of these provisions, which are set out in the report of the Vienna Session.[11] The Working Group will come back to the topic in November. In the meantime Working Group II has met, and after taking note of the suggestion that its opinion be sought, has requested the Secretariat to convene a joint meeting of experts, drawn from both Working Group III and Working Group II. This meeting may clarify the extent to which, if at all, the current provisions are in fact contrary to the principles in the New York Convention and the UNCITRAL Model Law. The Secretariat will then report to both Working Groups.

My final topic is freedom of contract, or more particularly, freedom to derogate from the mandatory provisions of the Convention in the case of volume contracts in the liner trade. This is a point on which the US has insisted from the outset. Volume contracts, which are often described as contracts of affreightment (COAs) or tonnage contracts in the non-liner trade, are not subject to the current regimes and it is not controversial that they should be excluded from the draft Convention. I doubt whether excluding volume contracts in the liner trade would have been controversial either, but the US wishes to include them, at least insofar as they are service contracts within the definition in the US Shipping Acts, and then to include provisions whereby the parties to such contracts may derogate from the mandatory terms, and in certain cases bind third parties to such derogation. These provisions are set out in article 95 of WP.56. In principle, the Working Group has so far been content with this structure, but, maybe because the provisions appear designed solely to accommodate practice under the US regulatory regime, with which other states may not be wholly familiar, or maybe because where the US leads, the world tends to follow, and I understand that service contracts are very widely used in the liner trade to and from the US, many delegates need to be reassured that this article will not eventually undermine the mandatory core provisions of the Convention, or disadvantage small and medium sized shippers. At the last session CMI was asked to prepare a paper setting out the factual position based on current commercial practice, as we understood it, and how the provisions of the Convention would apply to it. This paper will be published as a Working Paper for the next session[12] when the issue will be considered again, along with a drafting proposal intended to clarify and simplify the relevant provisions in WP.56. As they are drafted at present, these provisions are not all that easy to understand.

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[11] See A/CN.9/591 para. 95

[12] Now published as A/CN.9/WG III/WP.66

So that concludes my stocktaking. In short, what could be described as the core provisions of the draft Convention largely follow the principles which we put forward in the CMI draft. The remaining provisions have yet to be considered in detail by the Working Group and I would hesitate to predict the outcome of the forthcoming debates this year in New York and Vienna. We agreed in Vancouver that provisions on arbitration and jurisdiction should be included, but the current provisions are a long way from anything that the CMI has so far considered. The problems of excluding contracts similar to charterparties were only considered at any length in the last meeting of the International Sub-Committee in Madrid in November 2001 and the treatment of such contracts was left to the Working Group to decide. Chapter 3 and article 95 reflects the outcome of the deliberations so far. We look forward to further debate in New York.

PART III

Status of ratifications to Maritime Conventions

Etat des ratifications aux conventions de Droit Maritime

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS INTERNATIONALES DE DROIT MARITIME DE BRUXELLES

(Information communiquée par le Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, dépositaire des Conventions).

Notes de l'éditeur

(1) - Les dates mentionnées sont les dates du dépôt des instruments. L'indication (r) signifie ratification, (a) adhésion.

(2) - Les Etats dont le nom est suivi par un astérisque ont fait des réserves. Un résumé du texte de ces réserves est publié après la liste des ratifications de chaque Convention.

(3) - Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonciation prend effet.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE BRUSSELS INTERNATIONAL MARITIME LAW CONVENTIONS

(Information provided by the Ministère des Affaires Etrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, 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.

Convention internationale pour l'unification de certaines règles en matière d'Abordage et protocole de signature

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1er mars 1913

International convention for the unification of certain rules of law relating to Collision between vessels and protocol of signature

Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Angola	**(a)**	20.VII.1914
Antigua and Barbuda	**(a)**	1.II.1913
Argentina	**(a)**	28.II.1922
Australia	**(a)**	9.IX.1930
Norfolk Island	**(a)**	1.II.1913
Austria	**(r)**	1.II.1913
Bahamas	**(a)**	3.II.1913
Belize	**(a)**	3.II.1913
Barbados	**(a)**	1.II.1913
Belgium	**(r)**	1.II.1913
Brazil	**(r)**	31.XII.1913
Canada	**(a)**	25.IX.1914
Cape Verde	**(a)**	20.VII.1914
China		
Hong Kong[(1)]	**(a)**	1.II.1913
Macao[(2)]	**(r)**	25.XII.1913
Cyprus	**(a)**	1.II.1913
Croatia	**(a)**	8.X.1991
Denmark	**(r)**	18.VI.1913
Dominican Republic	**(a)**	1.II.1913
Egypt	**(a)**	29.XI.1943
Estonia	**(a)**	15.V.1929
Fiji	**(a)**	1.II.1913
Finland	**(a)**	17.VII.1923

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

(2) With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Collision Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

Abordage 1910		*Collision 1910*
France	**(r)**	1.II.1913
Gambia	**(a)**	1.II.1913
Germany	**(r)**	1.II.1913
Ghana	**(a)**	1.II.1913
Goa	**(a)**	20.VII.1914
Greece	**(r)**	29.IX.1913
Grenada	**(a)**	1.II.1913
Guinea-Bissau	**(a)**	20.VII.1914
Guyana	**(a)**	1.II.1913
Haiti	**(a)**	18.VIII.1951
Hungary	**(r)**	1.II.1913
India	**(a)**	1.II.1913
Iran	**(a)**	26.IV.1966
Ireland	**(r)**	1.II.1913
Italy	**(r)**	2.VI.1913
Jamaica	**(a)**	1.II.1913
Japan	**(r)**	12.I.1914
Kenya	**(a)**	1.II.1913
Kiribati	**(a)**	1.II.1913
Latvia	**(a)**	2.VIII.1932
Luxembourg	**(a)**	22.IV.1991
Libyan Arab Jamahiriya	**(a)**	9.XI.1934
Macao	**(a)**	20.VII.1914
Madagascar	**(r)**	1.II.1913
Malaysia	**(a)**	1.II.1913
Malta	**(a)**	1.II.1913
Mauritius	**(a)**	1.II.1913
Mexico	**(r)**	1.II.1913
Mozambique	**(a)**	20.VII.1914
Netherlands	**(r)**	1.II.1913
Newfoundland	**(a)**	11.III.1914
New Zealand	**(a)**	l9.V.1913
Nicaragua	**(r)**	18.VII.1913
Nigeria	**(a)**	1.II.1913
Norway	**(r)**	12.XI.1913
Papua New Guinea	**(a)**	1.II.1913
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	2.VI.1922
Portugal	**(r)**	25.XII.1913
Romania	**(r)**	1.II.1913
Russian Federation[3]	**(r)**	10.VII.1936
Saint Kitts and Nevis	**(a)**	1.II.1913

[3] Pursuant to a notification of the Ministry of foreign affairs of the Russian Federation dated 13th January 1992, the Russian Federation is now a party to all treaties to which the U.S.S.R. was a party. Russia had ratified the convention on the 1st February 1913.

Saint Lucia	**(a)**	3.III.1913
Saint Vincent and the Grenadines	**(a)**	1.II.1913
Solomon Islands	**(a)**	1.II.1913
Sao Tome and Principe	**(a)**	20.VII.1914
Seychelles	**(a)**	1.II.1913
Sierra Leone	**(a)**	1.II.1913
Singapore	**(a)**	1.II.1913
Slovenia	**(a)**	16.XI.1993
Somalia	**(a)**	1.II.1913
Spain	**(a)**	17.XI.1923
Sri-Lanka	**(a)**	1.II.1913
Sweden	**(r)**	12.XI.1913
(denunciation 19 December 1995)		
Switzerland	**(a)**	28.V.1954
Timor	**(a)**	20.VII.1914
Tonga	**(a)**	13.VI .1978
Trinidad and Tobago	**(a)**	1.II.1913
Turkey	**(a)**	4.VII.1913
Tuvalu	**(a)**	1.II.1913
United Kingdom	**(r)**	1.II.1913
Jersey, Guernsey, Isle of Man, Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, Cayman Islands, British Virgin Islands, Montserrat, Caicos & Turks Islands.		
Saint Helena, Wei-Hai-Wei	**(a)**	1.II.1913
Uruguay	**(a)**	21.VII.1915
Zaire	**(a)**	17.VII.1967

Convention internationale pour l'unification de certaines règles en matière

d'Assistance et de sauvetage maritimes

et protocole de signature

Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1 mars 1913

International convention for the unification of certain rules of law relating to

Assistance and salvage at sea

and protocol of signature

Brussels, 23rd September, 1910
Entered into force: l March 1913

(Translation)

Algeria	**(a)**	13.IV.1964
Angola	**(a)**	20.VII.1914
Antigua and Barbuda	**(a)**	1.II.1913

Assistance et sauvetage 1910 *Assistance and salvage 1910*

Argentina	**(a)**	28.II.1922
Australia	**(a)**	9.IX.1930
Norfolk Island	**(a)**	1.II.1913
Austria	**(r)**	1.II.1913
Bahamas	**(a)**	1.II.1913
Barbados	**(a)**	1.II.1913
Belgium	**(r)**	1.II.1913
Belize	**(a)**	1.II.1913
Brazil	**(r)**	31.XII.1913
Canada	**(a)**	25.IX.1914
(denunciation 22.XI.1994)		
Cape Verde	**(a)**	20.VII.1914
China		
Hong Kong[1]	**(a)**	1.II.1913
Macao[2]	**(r)**	25.VII.1913
Cyprus	**(a)**	1.II.1913
Croatia	**(a)**	8.X.1991
(denunciation 16.III.2000)		
Denmark	**(r)**	18.VI.1913
Dominican Republic	**(a)**	23.VII.1958
Egypt	**(a)**	19.XI.1943
Fiji	**(a)**	1.II.1913
Finland	**(a)**	17.VII.1923
France	**(r)**	1.II.1913
Gambia	**(a)**	1.II.1913
Germany	**(r)**	1.II.1913
Ghana	**(a)**	1.II.1913
Goa	**(a)**	20.VII.1914
Greece	**(r)**	15.X.1913
Grenada	**(a)**	1.II 1913
Guinea-Bissau	**(a)**	20.VII.1914
Guyana	**(a)**	1.II.1913

[1] With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsability 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'sRepublic of China.

Haiti	**(a)**	18.VIII.1951
Hungary	**(r)**	1.II.1913
India	**(a)**	1.II.1913
Iran	**(a)**	26.IV.1966
(denunciation 11.VII.2000)		
Ireland	**(r)**	1.II.1913
Italy	**(r)**	2.VI.1913
Jamaica	**(a)**	1.II.1913
Japan	**(r)**	12.I.1914
Kenya	**(a)**	1.II.1913
Kiribati	**(a)**	1.II.1913
Latvia	**(a)**	2.VIII.1932
Luxembourg	**(a)**	22.IV.1991
Malaysia	**(a)**	1.II.1913
Madagascar	**(r)**	1.II.1913
Mauritius	**(a)**	1.II.1913
Mexico	**(r)**	1.II.1913
Mozambique	**(a)**	20.VII.1914
Netherlands	**(r)**	1.II.1913
Newfoundland	**(a)**	12.XI.1913
New Zealand	**(a)**	19.V.1913
Nigeria	**(a)**	1.II.1913
Norway	**(r)**	12.XI.1913
(denunciation 9.XII.1996)		
Oman	**(a)**	21.VIII.1975
Papua - New Guinea	**(a)**	1.II.1913
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	15.X.1921
Portugal	**(r)**	25.VII.1913
Romania	**(r)**	1.II.1913
Russian Federation	**(a)**	10.VII.1936
Saint Kitts and Nevis	**(a)**	1.II.1913
Saint Lucia	**(a)**	3.III.1913
Saint Vincent and the Grenadines	**(a)**	1.II.1913
Solomon Islands	**(a)**	1.II.1913
Sao Tomé and Principe	**(a)**	20.VII.1914
Seychelles	**(a)**	1.II.1913
Sierra Leone	**(a)**	1.II.1913
Singapore	**(a)**	1.II.1913
Slovenia	**(a)**	13.X.1993
Somalia	**(a)**	1.II.1913
Spain	**(a)**	17.XI.1923
(denunciation 19.I.2006)		
Sri Lanka	**(a)**	1.II.1913
Sweden	**(r)**	12.XI.1913
Switzerland	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	1.VIII.1974

Timor	**(a)**	20.VII.1914
Tonga	**(a)**	13.VI.1978
Trinidad and Tobago	**(a)**	1.II.1913
Turkey	**(a)**	4.VII.1955
Tuvalu	**(a)**	1.II.1913
United Kingdom [3]	**(r)**	1.II.1913
Anguilla, Bermuda, Gibraltar, Falkland Islands and Dependencies, British Virgin Islands, Montserrat, Turks & Caicos Islands, Saint Helena *(denunciation 12.XII.1994 effective also for Falkland Islands, Montserrat, South Georgia and South Sandwich Islands)*	**(a)**	1.II.1913
United States of America	**(r)**	1.II.1913
Uruguay	**(a)**	21.VII.1915
Zaire	**(a)**	17.VII.1967

Protocole portant modification de la convention internationale pour l'unification de certaines règles en matière

d'Assistance et de sauvetage maritimes

Signée a Bruxelles, le 23 septembre 1910

Bruxelles, 27 mai 1967
Entré en vigueur: 15 août 1977

Protocol to amend the international convention for the unification of certain rules of law relating to

Assistance and salvage at sea

Signed at Brussels on 23rd September, 1910

Brussels, 27th May 1967
Entered into force: 15 August 1977

Austria	**(r)**	4.IV.1974
Belgium	**(r)**	11.IV.1973
Brazil	**(r)**	8.XI.1982
Croatia *(denunciation 16.III.2000)*	**(r)**	8.X.1991
Egypt	**(r)**	15.VII.1977
Jersey, Guernsey & Isle of Man	**(a)**	22.VI.1977
Papua New Guinea	**(a)**	14.X.1980
Slovenia	**(a)**	13.X.1993
Syrian Arab Republic	**(a)**	1.VIII.1974
United Kingdom	**(r)**	9.IX.1974

[3] Including Jersey, Guernsey and Isle of Man.

Convention internationale pour l'unification de certaines règles concernant la

Limitation de la responsabilité des propriètaires de navires de mer

et protocole de signature

Bruxelles, 25 août 1924
Entrée en vigueur: 2 juin 1931

International convention for the unification of certain rules relating to the

Limitation of the liability of owners of sea-going vessels

and protocol of signature

Brussels, 25th August 1924
Entered into force: 2 June 1931

Belgium	**(r)**	2.VI.1930
Brazil	**(r)**	28.IV.1931
Denmark	**(r)**	2.VI.1930
(denunciation - 30. VI. 1983)		
Dominican Republic	**(a)**	23.VII.1958
Finland	**(a)**	12.VII.1934
(denunciation - 30.VI.1983)		
France	**(r)**	23.VIII.1935
(denunciation - 26.X.1976)		
Hungary	**(r)**	2.VI.1930
Madagascar	**(r)**	12.VIII.1935
Monaco	**(r)**	15.V.1931
(denunciation - 24.I.1977)		
Norway	**(r)**	10.X.1933
(denunciation - 30.VI.1963)		
Poland	**(r)**	26.X.1936
Portugal	**(r)**	2.VI.1930
Spain	**(r)**	2.VI.1930
(denunciation - 4.I.2006)		
Sweden	**(r)**	1.VII.1938
(denunciation - 30.VI.1963)		
Turkey	**(a)**	4.VII.1955

Convention internationale pour l'unification de certaines règles en matière de

Connaissement

et protocole de signature

"Règles de La Haye 1924"

Bruxelles, le 25 août 1924
Entrée en vigueur: 2 juin 1931

International convention for the unification of certain rules of law relating to

Bills of lading

and protocol of signature

"Hague Rules 1924"

Brussels, 25th August 1924
Entered into force: 2 June 1931

(Translation)

Algeria	**(a)**	13.IV.1964
Angola	**(a)**	2.II.1952
Antigua and Barbuda	**(a)**	2.XII.1930
Argentina	**(a)**	19.IV.1961
Australia*	**(a)**	4.VII.1955
(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

[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 responsability for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

[2] With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

Denmark*	**(a)**	I.VII.1938
(denunciation – 1.III.1984)		
Dominican Republic	**(a)**	2.XII.1930
Ecuador	**(a)**	23.III.1977
Egypt	**(a)**	29.XI.1943
(denunciation - 1.XI.1997)		
Fiji	**(a)**	2.XII.1930
Finland	**(a)**	1.VII.1939
(denunciation – 1.III.1984)		
France*	**(r)**	4.I.1937
Gambia	**(a)**	2.XII.1930
Germany	**(r)**	1.VII.1939
Ghana	**(a)**	2.XII.1930
Goa	**(a)**	2.II.1952
Greece	**(a)**	23.III.1993
Grenada	**(a)**	2.XII.1930
Guyana	**(a)**	2.XII.1930
Guinea-Bissau	**(a)**	2.II.1952
Hungary	**(r)**	2.VI.1930
Iran	**(a)**	26.IV.1966
Ireland*	**(a)**	30.I.1962
Israel	**(a)**	5.IX.1959
Italy	**(r)**	7.X.1938
(denunciation – 22.XI.1984)		
Ivory Coast*	**(a)**	15.XII.1961
Jamaica	**(a)**	2.XII.1930
Japan*	**(r)**	1.VII.1957
(denunciation – 1. VI.1992)		
Kenya	**(a)**	2.XII.1930
Kiribati	**(a)**	2.XII.1930
Kuwait*	**(a)**	25.VII.1969
Lebanon	**(a)**	19.VII.1975
(denunciation - 1.XI.1997)		
Malaysia	**(a)**	2.XII.1930
Madagascar	**(a)**	13.VII.1965
Mauritius	**(a)**	24.VIII.1970
Monaco	**(a)**	15.V.1931
Mozambique	**(a)**	2.II.1952
Nauru*	**(a)**	4.VII.1955
Netherlands*	**(a)**	18.VIII.1956
(denunciation – 26.IV.1982)		
Nigeria	**(a)**	2.XII.1930
Norway	**(a)**	1.VII.1938
(denunciation – 1.III.1984)		
Papua New Guinea*	**(a)**	4.VII.1955
Paraguay	**(a)**	22.XI.1967
Peru	**(a)**	29.X.1964

Poland	**(r)**	4.VIII.1937
Portugal	**(a)**	24.XII.1931
Romania	**(r)**	4.VIII.1937
(denunciation – 18.III.2002)		
Sao Tomé and Principe	**(a)**	2.II.1952
Sarawak	**(a)**	3.XI.1931
Senegal	**(a)**	14.II.1978
Seychelles	**(a)**	2.XII.1930
Sierra-Leone	**(a)**	2.XII.1930
Singapore	**(a)**	2.XII.1930
Slovenia	**(a)**	25.VI.1991
Solomon Islands	**(a)**	2.XII.1930
Somalia	**(a)**	2.XII.1930
Spain	**(r)**	2.VI.1930
Sri-Lanka	**(a)**	2.XII.1930
St. Kitts and Nevis	**(a)**	2.XII.1930
St. Lucia	**(a)**	2.XII.1930
St. Vincent and the Grenadines	**(a)**	2.XII.1930
Sweden	**(a)**	1.VII.1938
(denunciation – 1.III.1984)		
Switzerland*	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	1.VIII.1974
Tanzania (United Republic of)	**(a)**	3.XII.1962
Timor	**(a)**	2.II.1952
Tonga	**(a)**	2.XII.1930
Trinidad and Tobago	**(a)**	2.XII.1930
Turkey	**(a)**	4.VII.1955
Tuvalu	**(a)**	2.XII.1930
United Kingdom of Great Britain and Northern Ireland (including Jersey and Isle of Man)*	**(r)**	2.VI.1930
(denunciation – 13.VI.1977)		
Gibraltar	**(a)**	2.XII.1930
(denunciation – 22.IX.1977)		
Bermuda, Falkland Islands and dependencies, Turks & Caicos Islands, Cayman Islands, British Virgin Islands, Montserrat, British Antarctic Territories.		
(denunciation 20.X.1983)		
Anguilla	**(a)**	2.XII.1930
Ascension, Saint Helène and Dependencies	**(a)**	3.XI.1931
United States of America*	**(r)**	29.VI.1937
Zaire	**(a)**	17.VII.1967

Reservations

Australia
a) The Commonwealth of Australia reserves the right to exclude from the operation of legislation passed to give effect to the Convention the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the States of Australia.
b) The Commonwealth of Australia reserves the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

Cuba
Le Gouvernement de Cuba se réserve le droit de ne pas appliquer les termes de la Convention au transport de marchandises en navigation de cabotage national.

Denmark
...Cette adhésion est donnée sous la réserve que les autres Etats contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne le Danemark:
1) La Loi sur la navigation danoise en date du 7 mai 1937 continuera à permettre que dans le cabotage national les connaissements et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.
2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l'article 122, dernier alinéa, de la loi danoise sur la navigation - le transport maritime entre le Danemark et les autres Etats nordiques, dont les lois sur la navigation contiennent des dispositions analogues.
3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome, le 23 novembre 1933, ne seront pas affectées par cette Convention."

Egypt
...Nous avons résolu d'adhérer par les présentes à la dite Convention, et promettons de concourir à son application. L'Egypte est, toutefois, d'avis que la Convention, dans sa totalité, ne s'applique pas au cabotage national. En conséquence, l'Egypte se réserve le droit de régler librement le cabotage national par sa propre législation...

France
...En procédant à ce dépôt, l'Ambassadeur de France à Bruxelles déclare, conformément à l'article 13 de la Convention précitée, que l'acceptation que lui donne le Gouvernement Français ne s'applique à aucune des colonies, possessions, protectorats ou territoires d'outre-mer se trouvant sous sa souveraineté ou son autorité.

Ireland
...Subject to the following declarations and reservations: 1. In relation to the carriage of goods by sea in ships carrying goods from any port in Ireland to any other port in Ireland or to a port in the United Kingdom, Ireland will apply Article 6 of the Convention as though the Article referred to goods of any class instead of to particular goods, and as though the proviso in the third paragraph of the said Article were omitted; 2. Ireland does not accept the provisions of the first paragraph of Article 9 of the Convention.

Ivory Coast
Le Gouvernement de la République de Côte d'Ivoire, en adhérant à ladite Convention précise que:
1) Pour l'application de l'article 9 de la Convention relatif à la valeur des unités monétaires employées, la limite de responsabilité est égale à la contre-valeur en francs CFA sur la base d'une livre or égale à deux livres sterling papier, au cours du change de l'arrivée du navire au port de déchargement.
2) Il se réserve le droit de réglementer par des dispositions particulières de la loi nationale le système de la limitation de responsabilité applicable aux transports maritimes entre deux ports de la république de Côte d'Ivoire.

Japan
Statement at the time of signature, 25.8.1925.
Au moment de procéder à la signature de la Convention Internationale pour l'unification de certaines règles en matière de connaissement, le soussigné, Plénipotentiaire du Japon, fait les réserves suivantes:
a) A l'article 4.
Le Japon se réserve jusqu'à nouvel ordre l'acceptation des dispositions du a) à l'alinéa 2 de l'article 4.
b) Le Japon est d'avis que la Convention dans sa totalité ne s'applique pas au cabotage national; par conséquent, il n'y aurait pas lieu d'en faire l'objet de dispositions au Protocole. Toutefois, s'il n'en pas ainsi, le Japon se réserve le droit de régler librement le cabotage national par sa propre législation.
Statement at the time of ratification
...Le Gouvernement du Japon déclare
1) qu'il se réserve l'application du premier paragraphe de l'article 9 de la Convention; 2) qu'il maintient la réserve b) formulée dans la Note annexée à la lettre de l'Ambassadeur du Japon à Monsieur le Ministre des Affaires étrangères de Belgique, du 25 août 1925, concernant le droit de régler librement le cabotage national par sa propre législation; et 3) qu'il retire la réserve a) de ladite Note, concernant les dispositions du a) à l'alinéa 2 de l'article 4 de la Convention.

Kuwait
Le montant maximum en cas de responsabilité pour perte ou dommage causé aux marchandises ou les concernant, dont question à l'article 4, paragraphe 5, est augmenté jusque £ 250 au lieu de £ 100.
The above reservation has been rejected by France and Norway. The rejection of Norway has been withdrawn on 12 April 1974. By note of 30.3.1971, received by the Belgian Government on 30.4.1971 the Government of Kuwait stated that the amount of £ 250 must be replaced by Kuwait Dinars 250.

Nauru
Reservations: a) the right to exclude from the operation of legislation passed to give effect to the Convention on the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the territory of Nauru; b) the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the last paragraph of that Article.

Netherlands
...Désirant user de la faculté d'adhésion réservée aux Etats non-signataires par l'article 12 de la Convention internationale pour l'unification de certaines règles en matière de 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 promettons de

concourir à son application, tout en Nous réservant le droit, par prescription légale,
1) de préciser que dans les cas prévus par l'article 4, par. 2 de c) à p) de la Convention, le porteur du 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 Etats contractants ne soulèvent aucune objection à ce que l'application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne 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, denier alinéa, de la loi norvégienne sur la navigation - le transport maritime entre la Norvège et autres Etats nordiques, dont les lois sur la navigation contiennent des dispositions analogues.
3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome le 23 novembre 1933, ne seront pas affectées par cette Convention.

Papua New Guinea
Reservations: a) the right to exclude from the operation of legislation passed to give effect to the Convention on the carriage of goods by sea which is not carriage in the course of trade or commerce with other countries or among the territories of Papua and New-Guinea; b) the right to apply Article 6 of the Convention in so far as the national coasting trade is concerned to all classes of goods without taking account of the restriction set out in the 1st paragraph of that Article.

Switzerland
...Conformément à l'alinéa 2 du Protocole de signature, les Autorités fédérales se réservent de donner effet à cet acte international en introduisant dans la législation suisse les règles adoptées par la Convention sous une forme appropriée à cette législation.

United Kingdom
...*I Declare* that His Britannic Majesty's Government adopt the last reservation in the additional Protocol of the Bills of Lading Convention. *I Further Declare* that my signature applies only to Great Britain and Northern Ireland. I reserve the right of each of the British Dominions, Colonies, Overseas Possessions and Protectorates, and of each of the territories over which his Britannic Majesty exercises a mandate to accede to this Convention under Article 13. "...In accordance with Article 13 of the above named Convention, I declare that the acceptance of the Convention given by His Britannic Majesty in the instrument of ratification deposited this day extends only to the United Kingdom of Great Britain and Northern Ireland and does not apply to any of His Majesty's Colonies or Protectorates, or territories under suzerainty or mandate.

United States of America
...*And whereas*, the Senate of the United States of America by their resolution of April 1 (legislative day March 13), 1935 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said convention and protocol of signature thereto, 'with the understanding, to be made a part of such ratification, that, not withstanding the provisions of Article 4, Section 5, and the first paragraph of Article 9 of the convention, neither the carrier nor the ship shall in any event be or become liable within the jurisdiction of the United States of America for any loss or damage to or in connection with goods in an amount exceeding 500.00 dollars, lawful money of the United States of America, per package or unit unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.
And whereas, the Senate of the United States of America by their resolution of May 6, 1937 (two-thirds of the Senators present concurring therein), did add to and make a part of their aforesaid resolution of April 1, 1935, the following understanding: That should any conflict arise between the provisions of the Convention and the provisions of the Act of April 16, 1936, known as the 'Carriage of Goods by Sea Act', the provisions of said Act shall prevail:
Now therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, having seen and considered the said convention and protocol of signature, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof, subject to the two understandings hereinabove recited and made part of this ratification.

Protocole portant modification de la Convention Internationale pour l'unification de certaines règles en matière de connaissement, signée a Bruxelles le 25 août 1924

Règles de Visby

Bruxelles, 23 février 1968
Entrée en vigueur: 23 juin 1977

Protocol to amend the International Convention for the unification of certain rules of law relating to bills of lading, signed at Brussells on 25 August 1924

Visby Rules

Brussels, 23rd February 1968
Entered into force: 23 June, 1977

Belgium	**(r)**	6.IX.1978
China		
Hong Kong(1)	**(r)**	1.XI.1980
Croatia	**(a)**	28.X.1998
Denmark	**(r)**	20.XI.1975

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Visby Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 3 of the Protocol.

Ecuador	**(a)**	23.III.1977
Egypt*	**(r)**	31.I.1983
Finland	**(r)**	1.XII.1984
France	**(r)**	10.VII.1977
Georgia	**(a)**	20.II.1996
Greece	**(a)**	23.III.1993
Italy	**(r)**	22.VIII.1985
Lebanon	**(a)**	19.VII.1975
Netherlands*	**(r)**	26.IV.1982
Norway	**(r)**	19.III.1974
Poland*	**(r)**	12.II.1980
Russian Federation	**(a)**	29.IV.1999
Singapore	**(a)**	25.IV.1972
Sri-Lanka	**(a)**	21.X.1981
Sweden	**(r)**	9.XII.1974
Switzerland	**(r)**	11.XII.1975
Syrian Arab Republic	**(a)**	1.VIII.1974
Tonga	**(a)**	13.VI.1978
United Kingdom of Great Britain	**(r)**	1.X.1976
Bermuda	**(a)**	1.XI.1980
Gibraltar	**(a)**	22.IX.1977
Isle of Man	**(a)**	1.X.1976
British Antarctic Territories, Caimans, Caicos & Turks Islands, Falklands Islands & Dependencies, Montserrat, Virgin Islands (extension)	**(a)**	20.X.1983

Reservations

Egypt Arab Republic
La République Arabe d'Egypte déclare dans son instrument de ratification qu'elle ne se considère pas liée par l'article 8 dudit Protocole (cette déclaration est faite en vertu de l'article 9 du Protocole).

Netherlands
Ratification effectuée pour le Royaume en Europe. Le Gouvernement du Royaume des Pays-Bas se réserve le droit, par prescription légale, de préciser que dans les cas prévus par l'article 4, alinéa 2 de c) à p) de la Convention, le porteur du 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".

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.

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.

Protocole DTS

SDR Protocol

Bruxelles, le 21 décembre 1979
Entrée en vigueur: 14 février 1984

Brussels, 21st December 1979
Entered into force: 14 February 1984

Australia	**(a)**	16.VII.1993
Belgium	**(r)**	7.IX.1983
China		
Hong Kong(1)	**(a)**	20.X.1983
Denmark	**(a)**	3.XI.1983
Finland	**(r)**	1.XII.1984
France	**(r)**	18.XI.1986
Georgia	**(a)**	20.II.1996
Greece	**(a)**	23.III.1993
Italy	**(r)**	22.VIII.1985
Japan	**(r)**	1.III.1993
Mexico	**(a)**	20.V.1994
Netherlands	**(r)**	18.II.1986
New Zealand	**(a)**	20.XII.1994
Norway	**(r)**	1.XII.1983
Poland*	**(r)**	6.VII.1984
Russian Federation	**(a)**	29.IV.1999
Spain	**(r)**	6.I.1982
Sweden	**(r)**	14.XI.1983
Switzerland*	**(r)**	20.I.1988
United Kingdom of Great-Britain and Northern Ireland	**(r)**	2.III.1982
Bermuda, British Antartic Territories, Virgin Islands, Caimans, Falkland Islands & Dependencies, Gibraltar, Isle of Man, Montserrat, Caicos & Turks Island (extension)	**(a)**	20.X.1983

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the SDR Protocol will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China. Reservations have been made by the Government of the People's Republic of China with respect to art. 8 of the Protocol.

Reservations

Poland
Poland does not consider itself bound by art. III.

Switzerland
Le Conseil fédéral suisse déclare, en se référant à l'article 4, paragraphe 5, alinéa d) de la Convention internationale du 25 août 1924 pour l'unification de certaines règles en matière de connaissement, telle qu'amendée par le Protocole de modification du 23 février 1968, remplacé par l'article II du Protocole du 21 décembre 1979, que la Suisse calcule de la manière suivante la valeur, en droit de tirage spécial (DTS), de sa monnaie nationale:
La Banque nationale suisse (BNS) communique chaque jour au Fonds monétaire international (FMI) le cours moyen du dollar des Etats Unis d'Amérique sur le marché des changes de Zürich. La 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)**	12.VII.1934
(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

Madagascar	**(r)**	23.VIII.1935
Monaco	**(a)**	15.V.1931
Norway	**(r)**	10.X.1933
(denunciation – 1.III.1965)		
Poland	**(r)**	26.X.1936
Portugal	**(a)**	24.XII.1931
Romania	**(r)**	4.VIII.1937
Spain	**(r)**	2.VI.1930
Switzerland	**(a)**	28.V.1954
Sweden	**(r)**	1.VII.1938
(denunciation – 1.III.1965)		
Syrian Arab Republic	**(a)**	14.II.1951
Turkey	**(a)**	4.VII.1955
Uruguay	**(a)**	15.IX.1970
Zaire	**(a)**	17.VII.1967

Reservations

Cuba

(Traduction) L'instrument d'adhésion contient une déclaration relative à l'article 19 de la Convention.

Italy

(Traduction) L'Etat italien se réserve la faculté de ne pas conformer son droit interne à la susdite Convention sur les points où ce droit établit actuellement:

– l'extension des privilèges dont question à l'art. 2 de la Convention, également aux dépendances du navire, au lieu qu'aux seuls accessoires tels qu'ils sont indiqués à l'art. 4;

– la prise de rang, après la seconde catégorie de privilèges prévus par l'art. 2 de la Convention, des privilèges qui couvrent les créances pour les sommes avancées par l'Administration de la Marine Marchande ou de la Navigation intérieure, ou bien par l'Autorité consulaire, pour l'entretien et le rapatriement des membres de l'équipage.

Convention internationale pour l'unification de certaines règles concernant les

Immunités des navires d'Etat

Bruxelles, 10 avril 1926
et protocole additionnel

Bruxelles, 24 mai 1934
Entrée en vigueur: 8 janvier 1937

International convention for the unification of certain rules concerning the

Immunity of State-owned ships

Brussels, 10th April 1926
and additional protocol

Brussels, May 24th 1934
Entered into force: 8 January 1937

(Translation)

Argentina	**(a)**	19.IV.1961
Belgium	**(r)**	8.I.1936

Brazil	**(r)**	8.I.1936
Chile	**(r)**	8.I.1936
Cyprus	**(a)**	19.VII.1988
Denmark	**(r)**	16.XI.1950
Estonia	**(r)**	8.I.1936
France	**(r)**	27.VII.1955
Germany	**(r)**	27.VI.1936
Greece	**(a)**	19.V.1951
Hungary	**(r)**	8.I.1936
Italy	**(r)**	27.I.1937
Luxembourg	**(a)**	18.II.1991
Libyan Arab Jamahiriya	**(r)**	27.I.1937
Madagascar	**(r)**	27.I.1955
Netherlands	**(r)**	8.VII.1936
Curaçao, Dutch Indies		
Norway	**(r)**	25.IV.1939
Poland	**(r)**	16.VII.1976
Portugal	**(r)**	27.VI.1938
Romania	**(r)**	4.VIII.1937
(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.

Convention internationale pour l'unification de certaines règles relatives à la

Compétence civile en matière d'abordage

Bruxelles, 10 mai 1952
Entrée en vigueur:
14 septembre 1955

International convention for the unification of certain rules relating to

Civil jurisdiction in matters of collision

Brussels, 10th May 1952
Entered into force:
14 September 1955

Algeria	**(a)**	18.VIII.1964
Antigua and Barbuda	**(a)**	12.V.1965
Argentina	**(a)**	19.IV.1961
Bahamas	**(a)**	12.V.1965
Belgium	**(r)**	10.IV.1961
Belize	**(a)**	21.IX.1965
Benin	**(a)**	23.IV.1958
Burkina Fasa	**(a)**	23.IV.1958
Cameroon	**(a)**	23.IV.1958
Central African Republic	**(a)**	23.IV.1958
China		
Hong Kong[1]	**(a)**	29.III.1963
Macao[2]	**(a)**	23.III.1999
Comoros	**(a)**	23.IV.1958
Congo	**(a)**	23.IV.1958
Costa Rica*	**(a)**	13.VII.1955
Cote d'Ivoire	**(a)**	23.IV.1958
Croatia*	**(r)**	8.X.1991
Cyprus	**(a)**	17.III.1994
Djibouti	**(a)**	23.IV.1958
Dominican Republic	**(a)**	12.V.1965
Egypt	**(r)**	24.VIII.1955
Fiji	**(a)**	10.X.1974
France	**(r)**	25.V.1957

[1] With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsability 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'sRepublic of China.

Overseas Territories	**(a)**	23.IV.1958
Gabon	**(a)**	23.IV.1958
Germany	**(r)**	6.X.1972
Greece	**(r)**	15.III.1965
Grenada	**(a)**	12.V.1965
Guinea	**(a)**	23.IV.1958
Guyana	**(a)**	29.III.1963
Haute Volta	**(a)**	23.IV.1958
Holy Seat	**(r)**	10.VIII.1956
Ireland	**(a)**	17.X.1989
Italy	**(r)**	9.XI.1979
Khmere Republic*	**(a)**	12.XI.1959
Kiribati	**(a)**	21.IX.1965
Luxembourg	**(a)**	18.II.1991
Madagascar	**(a)**	23.IV.1958
Mauritania	**(a)**	23.IV.1958
Mauritius	**(a)**	29.III.1963
Morocco	**(a)**	11.VII.1990
Niger	**(a)**	23.IV.1958
Nigeria	**(a)**	7.XI.1963
North Borneo	**(a)**	29.III.1963
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	14.III.1986
Portugal	**(r)**	4.V.1957
Romania	**(a)**	28.XI.1995
Sarawak	**(a)**	29.VIII.1962
Senegal	**(a)**	23.IV.1958
Seychelles	**(a)**	29.III.1963
Slovenia	**(a)**	13.X.1993
Solomon Islands	**(a)**	21.IX.1965
Spain	**(r)**	8.XII.1953
St. Kitts and Nevis	**(a)**	12.V.1965
St. Lucia	**(a)**	12.V.1965
St. Vincent and the Grenadines	**(a)**	12.V.1965
Sudan	**(a)**	23.IV.1958
Switzerland	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	1.VIII.1974
Tchad	**(a)**	23.IV.1958
Togo	**(a)**	23.IV.1958
Tonga	**(a)**	13.VI.1978
Tuvalu	**(a)**	21.IX.1965
United Kingdom of Great Britain and Northern Ireland	**(r)**	18.III.1959
Gibraltar	**(a)**	29.III.1963
British Virgin Islands	**(a)**	29.V.1963
Bermuda	**(a)**	30.V.1963
Caiman Islands, Montserrat	**(a)**	12.V.1965
Anguilla, St. Helena	**(a)**	12.V.1965
Turks Isles and Caicos	**(a)**	21.IX.1965
Guernsey	**(a)**	8.XII.1966
Falkland Islands and Dependencies	**(a)**	17.X.1969
Zaire	**(a)**	17.VII.1967

Reservations

Costa-Rica
(Traduction) Le Gouvernement de la République du Costa Rica, en adhérant à cette Convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon.
En conséquence, la République du Costa Rica ne reconnaît pas comme obligatoires les literas b) et c) du premier paragraphe de l'article premier."
"Conformément au Code du droit international privé approuvé par la sixième Conférence internationale américaine, qui s'est tenue à La Havane (Cuba), le Gouvernement de la République du Costa Rica, en acceptant cette Convention, fait cette réserve expresse que, en aucun cas, il ne renoncera à ca compétence ou juridiction pour appliquer la loi costaricienne en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire costaricien.

Croatia
Reservation made by Yugoslavia and now applicable to Croatia: "Le Gouvernement de la République Populaire Fédérative de Yougoslavie se réserve le droit de se déclarer au moment de la ratification sur le principe de "sistership" prévu à l'article 1° lettre (b) de cette Convention.

Khmere Republic
Le Gouvernement de la République Khmère, en adhérant à ladite convention, fait cette réserve que l'action civile du chef d'un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l'Etat dont le navire bat pavillon.
En conséquence, le Gouvernement de la République Khmère ne reconnaît pas le caractère obligatoire des alinéas b) et c) du paragraphe 1° de l'article 1°.
En acceptant ladite convention, le Gouvernement de la République Khmère fait cette réserve expresse que, en aucun cas, elle ne renoncera à sa compétence ou juridiction pour appliquer la loi khmère en matière d'abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d'un navire khmère.

Convention internationale pour l'unification de certaines règles relatives à la

Compétence pénale en matière d'abordage et autres événements de navigation

Bruxelles, 10 mai 1952
Entrée en vigueur:
20 novembre 1955

Internationd convention for the unification of certain rules relating to

Penal jurisdiction in matters of collision and other incidents of navigation

Brussels, 10th May 1952
Entered into force:
20 November 1955

Anguilla*	**(a)**	12.V.1965
Antigua and Barbuda*	**(a)**	12.V.1965
Argentina*	**(a)**	19.IV.1961
Bahamas*	**(a)**	12.V.1965
Belgium*	**(r)**	10.IV.1961

Belize*	**(a)**	21.IX.1965
Benin	**(a)**	23.IV.1958
Burkina Faso	**(a)**	23.IV.1958
Burman Union*	**(a)**	8.VII.1953
Cayman Islands*	**(a)**	12.VI.1965
Cameroon	**(a)**	23.IV.1958
Central African Republic	**(a)**	23.IV.1958
China		
Hong Kong[(1)]	**(a)**	29.III.1963
Macao[(2)]	**(a)**	23.III.1999
Comoros	**(a)**	23.IV.1958
Congo	**(a)**	23.IV.1958
Costa Rica*	**(a)**	13.VII.1955
Croatia*	**(r)**	8.X.1991
Cyprus	**(a)**	17.III.1994
Djibouti	**(a)**	23.IV.1958
Dominica, Republic of*	**(a)**	12.V.1965
Egypt*	**(r)**	24.VIII.1955
Fiji*	**(a)**	29.III.1963
France*	**(r)**	20.V.1955
Overseas Territories	**(a)**	23.IV.1958
Gabon	**(a)**	23.IV.1958
Germany*	**(r)**	6.X.1972
Greece	**(r)**	15.III.1965
Grenada*	**(a)**	12.V.1965
Guyana*	**(a)**	19.III.1963
Guinea	**(a)**	23.IV.1958

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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'sRepublic of China.

Compétence pénale 1952 *Penal jurisdiction 1952*

Haiti	**(a)**	17.IX.1954
Haute-Volta	**(a)**	23.IV.1958
Holy Seat	**(r)**	10.VIII.1956
Italy*	**(r)**	9.XI.1979
Ivory Coast	**(a)**	23.IV.1958
Khmere Republic*	**(a)**	12.XI.1956
Kiribati*	**(a)**	21.IX.1965
Lebanon	**(r)**	19.VII.1975
Luxembourg	**(a)**	18.II.1991
Madagascar	**(a)**	23.IV.1958
Mauritania	**(a)**	23.IV.1958
Mauritius*	**(a)**	29.III.1963
Montserrat*	**(a)**	12.VI.1965
Morocco	**(a)**	11.VII.1990
Netherlands*	**(r)**	
Kingdom in Europe, West Indies and Aruba	**(r)**	25.VI.1971
Niger	**(a)**	23.IV.1958
Nigeria*	**(a)**	7 XI.1963
North Borneo*	**(a)**	29.III.1963
Paraguay	**(a)**	22.XI.1967
Portugal*	**(r)**	4.V.1957
Romania	**(a)**	28.XI.1995
Sarawak*	**(a)**	28.VIII.1962
Senegal	**(a)**	23.IV.1958
Seychelles*	**(a)**	29.III.1963
Slovenia	**(a)**	13.X.1993
Solomon Islands*	**(a)**	21.IX.1965
Spain*	**(r)**	8.XII.1953
St. Kitts and Nevis*	**(a)**	12.V.1965
St. Lucia*	**(a)**	12.V.1965
St. Helena*	**(a)**	12.V.1965
St. Vincent and the Grenadines*	**(a)**	12.V.1965
Sudan	**(a)**	23.IV.1958
Suriname	**(r)**	25.VI.1971
Switzerland	**(a)**	28.V.1954
Syrian Arab Republic	**(a)**	10.VII.1972
Tchad	**(a)**	23.IV.1958
Togo	**(a)**	23.IV.1958
Tonga*	**(a)**	13.VI.1978
Tuvalu*	**(a)**	21.IX.1965
United Kingdom of Great Britain and Northern Ireland*	**(r)**	18.III.1959
Gibraltar	**(a)**	29.III.1963
British Virgin Islands	**(a)**	29.V.1963
Bermuda	**(a)**	30.V.1963
Anguilla	**(a)**	12.V.1965
Turks Islands and Caicos	**(a)**	21.IX.1965
Guernsey	**(a)**	8.XII.1966
Falkland Islands and dependencies	**(a)**	17.X.1969
Viet Nam*	**(a)**	26.XI.1955
Zaire	**(a)**	17.VII.1967

Reservations

Antigua, Cayman Island, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent
The Governments of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla (now the independent State of Anguilla), St. Helena and St. Vincent reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs assented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent. They reserve the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent.

Argentina
(Traduction) La République Argentine adhère à la Convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage et autres événements de navigation, sous réserve expresse du droit accordé par la seconde partie de l'article 4, et il est fixé que dans le terme "infractions" auquel cet article se réfère, se trouvent inclus les abordages et tout autre événement de la navigation visés à l'article 1° 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 responsability for the international rights and obligations that place on a Party to the Convention

Costa-Rica
(Traduction) Le Gouvernement de Costa-Rica ne reconnaît pas le caractère obligatoire des articles 1° and 2° de la présente Convention.

Croatia
Reservation made by Yugoslavia and now applicable to Croatia: "Sous réserve de ratifications ultérieure et acceptant la réserve prévue à l'article 4 de cette Convention. Conformément à l'article 4 de ladite Convention, le Gouvernement yougoslave se réserve le droit de poursuivre les infractions commises dans se propres eaux territoriales".

Dominica, Republic of
... Subject to the following reservations:
(a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Dominica;
(b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Dominica.

Egypt
Au moment de la signature le Plénipotentiaire égyptien a déclaré formuler la réserve prévue à l'article 4, alinéa 2. Confirmation expresse de la réserve faite au moment de la signature.

Fiji
The Government of Fiji reserves the right not to observe the provisions of article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respect that ship or any class of ship to which that ship belongs consented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Fiji.
The Government of Fiji reserves the right under article 4 of this Convention to take proceedings in respect of offences committed within the territorial water of Fiji.

France
Au nom du Gouvernement de la République Française je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de la convention internationale pour l'unification de certaines règles relatives à la compétence pénale en matière d'abordage.

Germany, Federal Republic of
(Traduction) Sous réserve du prescrit de l'article 4, alinéa 2.

Grenada
Same reservations as the Republic of Dominica

Guyana
Same reservations as the Republic of Dominica

Italy
Le Gouvernement de la République d'Italie se réfère à l'article 4, paragraphe 2, et se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Khmere Republic
Le Gouvernement de la République Khmère, d'accord avec l'article 4 de ladite convention, se réservera le droit de poursuivre les infractions commises dans ses eaux territoriales.

Kiribati
Same reservations as the Republic of Dominica

Mauritius
Same reservations as the Republic of Dominica

Montserrat
See Antigua.

Netherlands
Conformément à l'article 4 de cette Convention, le Gouvernement du Royaume des Pays-Bas, se réserve le droit de poursuivre les infractions commises dans ses propres eaux territoriales.

Nigeria
The Government of the Federal Republic of Nigeria reserve the right not to implement the provisions of Article 1 of the Convention in any case where that Government has an agreement with any other State that is applicable to a particular collision or other incident of navigation and if such agreement is inconsistent with the provisions of the said Article 1. The Government of the Federal Republic of Nigeria reserves the right, in accordance with Article 4 of the Convention, to take proceedings in respect of offences committed within the territorial waters of the Federal Republic of Nigeria.

North Borneo
Same reservations as the Republic of Dominica

Portugal
Au nom du Gouvernement portugais, je déclare formuler la réserve prévue à l'article 4, paragraphe 2, de cette Convention.

Sarawak
Same reservations as the Republic of Dominica

St. Helena
See Antigua.

St. Kitts-Nevis
See Antigua.

St. Lucia
Same reservations as the Republic of Dominica

St. Vincent
See Antigua.

Seychelles
Same reservations as the Republic of Dominica

Solomon Isles
Same reservations as the Republic of Dominica

Spain
La Délégation espagnole désire, d'accord avec l'article 4 de la Convention sur la compétence pénale en matière d'abordage, se réserver le droit au nom de son Gouvernement, de poursuivre les infractions commises dans ses eaux territoriales. Confirmation expresse de la réserve faite au moment de la signature.

Tonga
Same reservations as the Republic of Dominica

Tuvalu
Same reservations as the Republic of Dominica

United Kingdom
1. - Her Majesty's Government in the United Kingdom reserves the right not to apply the provisions of Article 1 of this Convention in any case where there exists between Her Majesty's Government and the Government of any other State an agreement which is applicable to a particular collision or other incident of navigation and is inconsistent with that Article.

2. - Her Majesty's Government in the United Kingdom reserves the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

...subject to the following reservations:

(1) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs consented to the institution of criminal and disciplinary proceedings before the judicial or administrative authorities of the United Kingdom.

(2) In accordance with the provisions of Article 4 of the said Convention, the Government of the United Kingdom of Great Britain and Northern Ireland reserve the right to take proceedings in respect of offences committed within the territorial waters of the United Kingdom.

(3) The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservation provided for in Article 4 of the said Convention...

Vietnam
Comme il est prévu à l'article 4 de la même convention, le Gouvernement vietnamien se réserve le droit de poursuivre les infractions commises dans la limite de ses eaux territoriales.

Convention internationale pour l'unification de certaines règles sur la
Saisie conservatoire des navires de mer

Bruxelles, 10 mai 1952
Entrée en vigueur: 24 février 1956

International convention for the unification of certain rules relating to
Arrest of sea-going ships

Brussels, 10th May 1952
Entered into force: 24 February 1956

Algeria	**(a)**	18.VIII.1964
Antigua and Barbuda*	**(a)**	12.V.1965
Bahamas*	**(a)**	12.V.1965
Belgium	**(r)**	10.IV.1961
Belize*	**(a)**	21.IX.1965
Benin	**(a)**	23.IV.1958
Burkina Faso	**(a)**	23.IV.1958
Cameroon	**(a)**	23.IV.1958
Central African Republic	**(a)**	23.IV.1958
China		
Hong Kong(1)	**(a)**	29.III.1963
Macao(2)	**(a)**	23.IX.1999
Comoros	**(a)**	23.IV.1958
Congo	**(a)**	23.IV.1958
Costa Rica*	**(a)**	13.VII.1955
Côte d'Ivoire	**(a)**	23.IV.1958
Croatia*	**(r)**	8.X.1991
Cuba*	**(a)**	21.XI.1983
Denmark	**(r)**	2.V.1989
Djibouti	**(a)**	23.IV.1958
Dominica, Republic of*	**(a)**	12.V.1965
Egypt*	**(r)**	24.VIII.1955
Fiji	**(a)**	29.III.1963
Finland	**(r)**	21.XII.1995
France	**(r)**	25.V.1957
Overseas Territories	**(a)**	23.IV.1958
Gabon	**(a)**	23.IV.1958

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Arrest Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

(2) The extension of the Convention to the territory of Macao as from 23 September 1999 has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People'sRepublic of China.

Germany*	**(r)**	6.X.1972
Greece	**(r)**	27.II.1967
Grenada*	**(a)**	12.V.1965
Guyana*	**(a)**	29.III.1963
Guinea	**(a)**	12.XII.1994
Haiti	**(a)**	4.XI.1954
Haute-Volta	**(a)**	23.IV.1958
Holy Seat	**(r)**	10.VIII.1956
Ireland*	**(a)**	17.X.1989
Italy*	**(r)**	9.XI.1979
Khmere Republic*	**(a)**	12.XI.1956
Kiribati*	**(a)**	21.IX.1965
Latvia	**(a)**	17.V.1993
Luxembourg	**(a)**	18.II.1991
Madagascar		23.IV.1958
Marocco	**(a)**	11.VII.1990
Mauritania	**(a)**	23.IV.1958
Mauritius*	**(a)**	29.III.1963
Namibia	**(a)**	14.III.2000
Netherlands*	**(r)**	20.I.1983
Niger	**(a)**	23.IV.1958
Nigeria*	**(a)**	7.XI.1963
North Borneo*	**(a)**	29.III.1963
Norway	**(r)**	1.XI.1994
Paraguay	**(a)**	22.XI.1967
Poland	**(a)**	16.VII.1976
Portugal	**(r)**	4.V.1957
Romania	**(a)**	28.XI.1995
Russian Federation*	**(a)**	29.IV.1999
St. Kitts and Nevis*	**(a)**	12.V.1965
St. Lucia*	**(a)**	12.V.1965
St. Vincent and the Grenadines*	**(a)**	12.V.1965
Sarawak*	**(a)**	28.VIII.1962
Senegal	**(a)**	23.IV.1958
Seychelles*	**(a)**	29.III.1963
Slovenia	**(a)**	13.X.1993
Solomon Islands*	**(a)**	21.IX.1965
Spain	**(r)**	8.XII.1953
Sudan	**(a)**	23.IV.1958
Sweden	**(a)**	30.IV.1993
Switzerland	**(a)**	28.V.1954
Syrian Arabic Republic	**(a)**	3.II.1972
Tchad	**(a)**	23.IV.1958
Togo	**(a)**	23.IV.1958
Tonga*	**(a)**	13.VI.1978
Turks Isles and Caicos*	**(a)**	21.IX.1965
Tuvalu*	**(a)**	21.IX.1965
United Kingdom of Great Britain* and Northern Ireland	**(r)**	18.III.1959
United Kingdom (Overseas Territories)*		
Gibraltar	**(a)**	29.III.1963
British Virgin Islands	**(a)**	29.V.1963

Bermuda	**(a)**	30.V.1963
Anguilla, Caiman Islands, Montserrat, St. Helena	**(a)**	12.V.1965
Guernsey	**(a)**	8.XII.1966
Falkland Islands and dependencies	**(a)**	17.X.1969
Zaire	**(a)**	17.VII.1967

Reservations

Antigua
...Reserves the right not to apply the provisions of this Convention to warships or to vessels owned by or in the service of a State.

Bahamas
...With reservation of the right not to apply the provisions of this Convention to warships or to vessels owned by or in service of a State.

Belize
Same reservation as the Bahamas.

Costa Rica
(Traduction) Premièrement: le 1er paragraphe de l'article 3 ne pourra pas être invoqué pour saisir un navire auquel la créance ne se rapporte pas et qui n'appartient plus à la personne qui était propriétaire du navire auquel cette créance se rapporte, conformément au registre maritime du pays dont il bat pavillon et bien qu'il lui ait appartenu.
Deuxièmement: que Costa Rica ne reconnaît pas le caractère obligatoire des alinéas a), b), c), d), e) et f) du paragraphe 1er de l'article 7, étant donné que conformément aux lois de la République les seuls tribunaux compétents quant au fond pour connaître des actions relatives aux créances maritimes, sont ceux du domicile du demandeur, sauf s'il s'agit des cas visés sub o), p) et q) à l'alinéa 1er de l'article 1, ou ceux de l'Etat dont le navire bat pavillon.
Le Gouvernement de Costa Rica, en ratifiant ladite Convention, se réserve le droit d'appliquer la législation en matière de commerce et de travail relative à la saisie des navires étrangers qui arrivent dans ses ports.

Côte d'Ivoire
Confirmation d'adhésion de la Côte d'Ivoire. Au nom du Gouvernement de la République de Côte d'Ivoire, nous, Ministre des Affaires Etrangères, confirmons que par Succession d'Etat, la République de Côte d'Ivoire est devenue, à la date de son accession à la souveraineté internationale, le 7 août 1960, partie à la Convention internationale pour l'unification de certaines règles sur la saisie conservatoire des navires de mer, signée à Bruxelles le 10 mai 1952, qu'elle l'a été de façon continue depuis lors et que cette Convention est aujourd'hui, toujours en vigueur à l'égard de la Côte d'Ivoire.

Croatia
Reservation made by Yugoslavia and now applicable to Croatia: "...en réservant conformément à l'article 10 de ladite Convention, le droit de ne pas appliquer ces dispositions à la saisie d'un navire pratiquée en raison d'une créance maritime visée au point o) de l'article premier et d'appliquer à cette saisie la loi nationale".

Cuba
(Traduction) L'instrument d'adhésion contient les réserves prévues à l'article 10 de la Convention celles de ne pas appliquer les dispositions de la Convention aux navires de guerre et aux navires d'Etat ou au service d'un Etat, ainsi qu'une déclaration relative à l'article 18 de la Convention.

Dominica, Republic of
Same reservation as Antigua

Egypt
Au moment de la signature le Plénipotentiaire égyptien à déclaré formuler les réserves prévues à l'article 10.
Confirmation expresse des réserves faites au moment de la signature.

Germany, Federal Republic of
(Traduction) ...sous réserve du prescrit de l'article 10, alinéas a et b.

Grenada
Same reservation as Antigua.

Guyana
Same reservation as the Bahamas.

Ireland
Ireland reserves the right not to apply the provisions of the Convention to warships or to ships owned by or in service of a State.

Italy
Le Gouvernement de la République d'Italie se réfère à l'article 10, par. (a) et (b), et se réserve:
(a) le droit de ne pas appliquer les dispositions de la présente Convention à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux o) et p) de l'article premier et d'appliquer à cette saisie sa loi nationale;
(b) le droit de ne pas appliquer les dispositions du premier paragraphe de l'article 3 à la saisie pratiquée sur son territoire en raison des créances prévues à l'alinéa q) de l'article 1.

Khmere Republic
Le Gouvernement de la République Khmère en adhérant à cette convention formule les réserves prévues à l'article 10.

Kiribati
Same reservation as the Bahamas.

Mauritius
Same reservation as Antigua.

Netherlands
Réserves formulées conformément à l'article 10, paragraphes (a) et (b):
- les dispositions de la Convention précitée ne sont pas appliquées à la saisie d'un navire pratiquée en raison d'une des créances maritimes visées aux alinéas o) et p) de l'article 1, saisie à laquelle s'applique le loi néerlandaise; et
- les dispositions du premier paragraphe de l'article 3 ne sont pas appliquées à la saisie pratiquée sur le territoire du Royaume des Pays-Bas en raison des créances prévues à l'alinéa q) de l'article 1.

Cette ratification est valable depuis le 1er janvier 1986 pour le Royaume des Pays-Bas, les Antilles néerlandaises et Aruba.

Nigeria
Same reservation as Antigua.

North Borneo
Same reservation as Antigua.

Russian Federation
The Russian Federation reserves the right not to apply the rules of the International Convention for the unification of certain rules relating to the arrest of sea-going ships of 10 May 1952 to warships, military logistic ships and to other vessels owned or operated by the State and which are exclusively used for non-commercial purposes.
Pursuant to Article 10, paragraphs (a) and (b), of the International Convention for the

unification of certain rules relating to the arrest of sea-going ships, the Russian Federation reserves the right not to apply:
– the rules of the said Convention to the arrest of any ship for any of the claims enumerated in Article 1, paragraph 1, subparagraphs (o) and (p), of the Convention, but to apply the legislation of the Russian Federation to such arrest;
– the first paragraph of Article 3 of the said Convention to the arrest of a ship, within the jurisdiction of the Russian Federation, for claims set out in Article 1, paragrap 1, subparagraph (q), of the Convention.

St. Kitts and Nevis
Same reservation as Antigua.

St. Lucia
Same reservation as Antigua.

St. Vincent and the Grenadines
Same reservation as Antigua.

Sarawak
Same reservation as Antigua.

Seychelles
Same reservation as the Bahamas.

Solomon Islands
Same reservation as the Bahamas.

Tonga
Same reservation as Antigua.

Turk Isles and Caicos
Same reservation as the Bahamas.

Tuvalu
Same reservation as the Bahamas.

United Kingdom of Great Britain and Northern Ireland
... Subject to the following reservations:
1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

United Kingdom (Overseas Territories)
Anguilla, Bermuda, British Virgin Islands, Caiman Islands, Falkland Islands and Dependencies, Gibraltar, Guernsey, Hong Kong, Montserrat, St. Helena, Turks Isles and Caicos

... Subject to the following reservations:
1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

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
(denunciation – 30.V. 1990)		
Bahamas*	**(a)**	21.VIII.1964
Barbados*	**(a)**	4.VIII.1965
Belgium	**(r)**	31.VII.1975
(denunciation – 1.IX.1989)		
Belize	**(r)**	31.VII.1975
China		
Macao[1]	**(a)**	20.XII.1999
Denmark*	**(r)**	1.III.1965
(denunciation – 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
(denunciation – 1.IV.1984)		
France	**(r)**	7.VII.1959
(denunciation – 15.VII.1987)		
Germany	**(r)**	6.X.1972
(denunciation – 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'sRepublic of China.

Japan	**(r)**	1.III.1976
(denunciation – 19.V.1983)		
Kiribati*	**(a)**	21.VIII.1964
Lebanon	**(a)**	23.XII.1994
Madagascar	**(a)**	13.VII.1965
Mauritius*	**(a)**	21.VIII.1964
Monaco*	**(a)**	24.I.1977
Netherlands	**(r)**	10.XII.1965
(denunciation – 1.IX.1989)		
Aruba*	**(r)**	1.I.1986
Norway	**(r)**	1.III.1965
(denunciation – 1.IV.1984)		
Papua New Guinea*	**(a)**	14.III.1980
Poland	**(r)**	1.XII.1972
Portugal*	**(r)**	8.IV.1968
St. Lucia*	**(a)**	4.VIII.1965
St. Vincent and the Grenadines	**(a)**	4.VIII.1965
Seychelles*	**(a)**	21.VIII.1964
Singapore*	**(a)**	17.IV.1963
Solomon Islands*	**(a)**	21.VIII.1964
Spain*	**(r)**	16.VII.1959
(denunciation - 04.I. 2006)		
Sweden	**(r)**	4.VI.1964
(denunciation – 1.IV.1984)		
Switzerland	**(r)**	21.I.1966
Syrian Arab Republic	**(a)**	10.VII.1972
Tonga*	**(a)**	13.VI.1978
Tuvalu*	**(a)**	21.VIII.1964
United Arab Republic*	**(a)**	7.IX.1965
United Kingdom*	**(r)**	18.II.1959
Isle of Man	**(a)**	18.XI.1960
Bermuda, British Antarctic Territories, Falkland and Dependencies, Gibraltar, British Virgin Islands	**(a)**	21.VIII.1964
Guernsey and Jersey	**(a)**	21.X.1964
Caiman Islands, Montserrat, Caicos and Turks Isles*	**(a)**	4.VIII.1965
Vanuatu	**(a)**	8.XII.1966
Zaire	**(a)**	17.VII.1967

Reservations

Bahamas
...Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Barbados
Same reservation as Bahamas

China
The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right not to be bound by paragraph 1.(c) of Article 1 of the

Convention. The Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to regulate by specific provisions of laws of the Macao Special Administrative Region the system of limitation of liability to be applied to ships of less than 300 tons. With reference to the implementation of the Convention in the Macao Special Administrative Region, the Government of the People's Repubic 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 responsability for the international rights and obligations that place on a Party to the Convention.

Denmark
Le Gouvernement du Danemark se réserve le droit:
1) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
2) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Dominica, Republic of
Same reservation as Bahamas

Egypt Arab Republic
Reserves the right:
1) to exclude the application of Article 1, paragraph (1)(c);
2) to regulate by specific provisions of national law the system of limitation to be applied to ships of less than 300 tons;
3) on 8 May, 1984 the Egyptian Arab Republic has verbally notified the denunciation in respect of this Convention. This denunciation will become operative on 8 May, 1985.

Fiji
Le 22 août 1972 a été reçue au Ministère des Affaires étrangères, du Commerce extérieur et de la Coopération au Développement une lettre de Monsieur K.K.T. Mara, Premier Ministre et Ministre des Affaires étrangères de Fidji, notifiant qu'en ce qui concerne cette Convention, le Gouvernement de Fidji reprend, à partir de la date de l'indépendance de Fidji, c'est-à-dire le 10 octobre 1970, les droits et obligations souscrits antérieurement par le Royaume-Uni, avec les réserves figurant ci-dessous.
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
Furthermore in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of signature, the Government of Fiji declare that the said Convention as such has not been made part in Fiji law, but that the appropriate provisions to give effect thereto have been introduced in Fiji law.

Ghana
The Government of Ghana in acceding to the Convention reserves the right:
1) To exclude the application of Article 1, paragraph (1)(c);
2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Grenada
Same reservation as Bahamas

Guyana
Same reservation as Bahamas

Iceland
The Government of Iceland reserves the right:
1) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
2) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

India
Reserve the right:
1) To exclude the application of Article 1, paragraph (1)(c);
2) To regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons;
3) to give effect to this Convention either by giving it the force of law or by including in national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Iran
Le Gouvernement de l'Iran se réserve le droit:
1) d'exclure l'application de l'article 1, paragraphe (1)(c);
2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Israel
The Government of Israel reserves to themselves the right to:
1) exclude from the scope of the Convention the obligations and liabilities stipulated in Article 1(1)(c);
2) regulate by provisions of domestic legislation the limitation of liability in respect of ships of less than 300 tons of tonnage;
The Government of Israel reserves to themselves the right to give effect to this Convention either by giving it the force of law or by including in its national legislation, in a form appropriate to that legislation, the provisions of this Convention.

Kiribati
Same reservation as Bahamas

Mauritius
Same reservation as Bahamas

Monaco
En déposant son instrument d'adhésion, Monaco fait les réserves prévues au paragraphe 2° du Protocole de signature.

Netherlands-Aruba
La Convention qui était, en ce qui concerne le Royaume de Pays-Bas, uniquement applicable au Royaume en Europe, a été étendue à Aruba à partir du 16.XII.1986 avec effet rétroactif à compter du 1er janvier 1986.
La dénonciation de la Convention par les Pays-Bas au 1er septembre 1989, n'est pas valable pour Aruba.

Note: Le Gouvernement des Pays-Bas avait fait les réservations suivantes:
Le Gouvernement des Pays-Bas se réserve le droit:
1) d'exclure l'application de l'article 1, paragraphe (1)(c);
2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonneaux de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.
... Conformément au paragraphe (2)(c) du Protocole de signature Nous nous réservons de donner effet à la présente Convention en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Papua New Guinea
(a) The Government of Papua New Guinea excludes paragraph (1)(c) of Article 1.
(b) The Government of Papua New Guinea will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
(c) The Government of Paupua New Guinea shall give effect to the said Convention by including the provisions of the said Convention in the National Legislation of Papua New Guinea.

Portugal
(Traduction) ...avec les réserves prévues aux alinéas a), b) et c) du paragraphe deux du Protocole de signature...

St. Lucia
Same reservation as Bahamas

Seychelles
Same reservation as Bahamas

Singapore
Le 13 septembre 1977 à été reçue une note verbale datée du 6 septembre 1977, émanant du Ministère des Affaires étrangères de Singapour, par laquelle le Gouvernement de Singapour confirme qu'il se considère lié par la Convention depuis le 31 mai 1968, avec les réserves suivantes:
...Subject to the following reservations:
a) the right to exclude the application of Article 1, paragraph (1)(c); and
b) to regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons. The Government of the Republic of Singapore declares under sub-paragraph (c) of paragraph (2) of the Protocol of signature that provisions of law have been introduced in the Republic of Singapore to give effect to the Convention, although the Convention as such has not been made part of Singapore law.

Solomon Islands
Same reservation as Bahamas

Spain
Le Gouvernement espagnol se réserve le droit:
1) d'exclure du champ d'application de la Convention les obligations et les responsabilités prévues par l'article 1, paragraphe (1)(c);
2) de régler par les dispositions particulières de sa loi nationale le système de limitation de responsabilité applicable aux propriétaires de navires de moins de 300 tonneaux de jauge;
3) de donner effet à la présente Convention, soit en lui donnant force de loi, soit en incluant dans la législation nationale les dispositions de la présente Convention sous une forme appropriée à cette législation.

Tonga
Reservations:
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the Protocol of signature, the Government of the Kingdom of Tonga will regulate by specific provisions of national law the system of liability to be applied to ships of less than 300 tons.

Tuvalu
Same reservation as Bahamas

United Kingdom of Great Britain and Northern Ireland
Subject to the following observations:
1) In accordance with the provisions of subparagraph (a) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland exclude paragraph (1)(c) of Article 1 from their application of the said Convention.
2) In accordance with the provisions of subparagraph (b) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland will regulate by specific provisions of national law the system of limitation of liability to be applied to ships of less than 300 tons.
3) The Government of the United Kingdom of Great Britain and Northern Ireland also reserve the right, in extending the said Convention to any of the territories for whose international relations they are responsible, to make such extension subject to any or all of the reservations set out in paragraph (2) of the said Protocol of Signature. Furthermore, in accordance with the provisions of subparagraph (c) of paragraph (2) of the said Protocol of Signature, the Government of the United Kingdom of Great Britain and Northern Ireland declare that the said Convention as such has not been made part of the United Kingdom law, but that the appropriate provisions to give effect thereto have been introduced in United Kingdom law.

United Kingdom Overseas Territories

Anguilla, Bermuda, British Antarctic Territories, British Virgin Islands, Caiman Islands, Caicos and Turks Isles, Falkland and Dependencies, Gibraltar, Guernsey and Jersey, Hong Kong, Isle of Man, Montserrat

... Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Protocole portant modification de la convention internationale sur la

Limitation de la responsabilité des propriétaires de navires de mer

du 10 octobre 1957

Bruxelles le 21 décembre 1979
Entré en vigueur: 6 octobre 1984

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	**(r)**	30.XI.1983
Belgium	**(r)**	7.IX.1983

Luxembourg	**(a)**	18.II.1991
Poland	**(r)**	6.VII.1984
Portugal	**(r)**	30.IV.1982
Spain	**(r)**	14.V.1982
(denunciation - 04.I. 2006)		
Switzerland	**(r)**	20.I.1988
United Kingdom of Great Britain and Northern Ireland	**(r)**	2.III.1982
(denunciation – 1.XII.1985)		
Isle of Man, Bermuda, Falkland and Dependencies, Gibraltar, Hong-Kong, British Virgin Islands, Guernsey and Jersey, Cayman Islands, Montserrat, Caicos and Turks Isles (denunciation – 1.XII.1985)		

Convention internationale sur les
Passagers Clandestins

Bruxelles, 10 octobre 1957
Pas encore en vigueur

International convention relating to
Stowaways

Brussels, 10th October 1957
Not yet in force

Belgium	**(r)**	31.VII.1975
Denmark	**(r)**	16.XII.1963
Finland	**(r)**	2.II.1966
Italy	**(r)**	24.V.1963
Luxembourg	**(a)**	18.II.1991
Madagascar	**(a)**	13.VII.1965
Morocco	**(a)**	22.I.1959
Norway	**(r)**	24.V.1962
Peru	**(r)**	23.XI.1961
Sweden	**(r)**	27.VI.1962

Convention internationale pour l'unification de certaines règles en matière de
Transport de passagers par mer
et protocole

Bruxelles, 29 avril 1961
Entrée en vigueur: 4 juin 1965

International convention for the unification of certain rules relating to
Carriage of passengers by sea
and protocol

Brussels, 29th April 1961
Entered into force: 4 June 1965

Algeria	**(a)**	2.VII.1973
Cuba*	**(a)**	7.I.1963
France	**(r)**	4.III.1965
(denunciation – 3.XII.1975)		
Haïti	**(a)**	19.IV.1989
Iran	**(a)**	26.IV.1966

Madagascar	**(a)**	13.VII.1965
Morocco*	**(r)**	15.VII.1965
Peru	**(a)**	29.X.1964
Switzerland	**(r)**	21.I.1966
Tunisia	**(a)**	18.VII.1974
United Arab Republic*	**(r)**	15.V.1964
Zaire	**(a)**	17.VII.1967

Reservations

Cuba
(Traduction) ...Avec les réserves suivantes:
1) De ne pas appliquer la Convention aux transports qui, d'après sa loi nationale, ne sont pas considérés comme transports internationaux.
2) De ne pas appliquer la Convention, lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.
3) De donner effet à cette Convention, soit en lui donnant force de loi, soit en incluant dans sa législation nationale les dispositions de cette Convention sous une forme appropriée à cette législation.

Morocco
...Sont et demeurent exclus du champ d'application de cette convention:
1) les transports de passagers effectués sur les navires armés au cabotage ou au bornage, au sens donné à ces expressions par l'article 52 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par le dahir du 29 Chaabane 1380 (15 février 1961).
2) les transports internationaux de passagers lorsque le passager et le transporteur sont tous deux de nationalité marocaine.
Les transports de passagers visés...ci-dessus demeurent régis en ce qui concerne la limitation de responsabilité, par les disposition de l'article 126 de l'annexe I du dahir du 28 Joumada II 1337 (31 mars 1919) formant code de commerce maritime, tel qu'il a été modifié par la dahir du 16 Joumada II 1367 (26 avril 1948).

United Arab Republic
Sous les réserves prévues aux paragraphes (1), (2) et (3) du Protocole.

Convention internationale relative à la responsabilité des exploitants de
Navires nucléaires
et protocole additionnel

Bruxelles, 25 mai 1962
Pas encore en vigueur

International convention relating to the liability of operators of
Nuclear ships
and additional protocol

Brussels, 25th May 1962
Not yet in force

Lebanon	**(r)**	3.VI.1975
Madagascar	**(a)**	13.VII.1965
Netherlands*	**(r)**	20.III.1974
Portugal	**(r)**	31.VII.1968
Suriname	**(r)**	20.III.1974
Syrian Arab Republic	**(a)**	1.VIII.1974
Zaire	**(a)**	17.VII.1967

Reservations

Netherlands
Par note verbale datée du 29 mars 1976, reçue le 5 avril 1976, par le Gouvernement belge, l'Ambassade des Pays-Bas à Bruxelles a fait savoir:
Le Gouvernement du Royaume des Pays-Bas tient à déclarer, en ce qui concerne les dispositions du Protocole additionnel faisant partie de la Convention, qu'au moment de son entrée en vigueur pour le Royaume des Pays-Bas, ladite Convention y devient impérative, en ce sens que les prescriptions légales en vigueur dans le Royaume n'y seront pas appliquées si cette application est inconciliable avec les dispositions de la Convention.

Convention internationale pour l'unification de certaines règles en matière de
Transport de bagages de passagers par mer

Bruxelles, 27 mai 1967
Pas en vigueur

International Convention for the unification of certain rules relating to
Carriage of passengers' luggage by sea

Brussels, 27th May 1967
Not in force

Algeria	**(a)**	2.VII.1973
Cuba*	**(a)**	15.II.1972

Reservations

Cuba
(Traduction) Le Gouvernement révolutionnaire de la République de Cuba, Partie Contractante, formule les réserves formelles suivantes:
1) de ne pas appliquer cette Convention lorsque le passager et le transporteur sont tous deux ressortissants de cette Partie Contractante.
3) en donnant effet à cette Convention, la Partie Contractante pourra, en ce qui concerne les contrats de transport établis à l'intérieur de ses frontières territoriales pour un voyage dont le port d'embarquement se trouve dans lesdites limites territoriales, prévoir dans sa législation nationale la forme et les dimensions des avis contenant les dispositions de cette Convention et devant figurer dans le contrat de transport. De même, le Gouvernement révolutionnaire de la République de Cuba déclare, selon le prescrit de l'article 18 de cette Convention, que la République de Cuba ne se considère pas liée par l'article 17 de ladite Convention.

Convention internationale relative à l'inscription des droits relatifs aux
Navires en construction

Bruxelles, 27 mai 1967
Pas encore en vigueur

International Convention relating to the registration of rights in respect of
Vessels under construction

Brussels, 27th May 1967
Not yet in force

Croatia	**(r)**	3.V.1971
Greece	**(r)**	12.VII.1974
Norway	**(r)**	13.V.1975
Sweden	**(r)**	13.XI.1975
Syrian Arab Republic	**(a)**	1.XIII.1974

Convention internationale pour l'unification de certaines règles relatives aux
Privilèges et hypothèques maritimes

Bruxelles, 27 mai 1967
Pas encore en vigueur

International Convention for the unification of certain rules relating to
Maritime liens and mortgages

Brussels, 27th May 1967
Not yet in force

Denmark*	**(r)**	23.VIII.1977
Morocco*	**(a)**	12.II.1987
Norway*	**(r)**	13.V.1975
Sweden*	**(r)**	13.XI.1975
Syrian Arab Republic	**(a)**	1.VIII.1974

Reservations

Denmark
L'instrument de ratification du Danemark est accompagné d'une déclaration dans laquelle il est précisé qu'en ce qui concerne les Iles Féroe les mesures d'application n'ont pas encore été fixées.

Morocco
L'instrument d'adhésion est accompagné de la réserve suivante: Le Royaume du Maroc adhère à la Convention Internationale pour l'unification de certaines règles relatives aux privilèges et hypothèques maritimes faite à Bruxelles le 27 mai 1967, sous réserve de la non-application de l'article 15 de la dite Convention.

Norway
Conformément à l'article 14 le Gouvernement du Royaume de Norvège fait les réserves suivantes:
1) mettre la présente Convention en vigueur en incluant les dispositions de la présente Convention dans la législation nationale suivant une forme appropriée à cette législation;
2) faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

Sweden
Conformément à l'article 14 la Suède fait les réserves suivantes:
1) de mettre la présente Convention en vigueur en incluant les dispositions de la Convention dans la législation nationale suivant une forme appropriée à cette législation;
2) de faire application de la Convention internationale sur la limitation de la responsabilité des propriétaires de navires de mer, signée à Bruxelles le 10 octobre 1957.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE IMO CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

Editor's notes

1. This Status is based on advices from the International Maritime Organisation and reflects the situation as at 30 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

1. Cet état est basé sur des informations recues de l'Organisation Maritime Internationale et reflète la situation au 30 June, 2006.
2. Les dates mentionnées sont les dates du depôt des instruments.
3. L'asterisque qui suit le nom d'un Etat indique que cet Etat a fait une déclaration, une reserve ou une communication dont le texte est publié à la fin de chaque état de ratifications et adhesions.
4. Les dates mentionnées pour la dénonciation sont les dates à lesquelles la dénonciation prend effet.

International Convention on Civil liability for oil pollution damage

(CLC 1969)

Done at Brussels, 29 November 1969
Entered into force: 19 June 1975

Convention Internationale sur la Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures (CLC 1969)

Signée a Bruxelles, le 29 novembre 1969
Entrée en vigueur: 19 juin 1975

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	30.VI.2006
Algeria (accession)	14.VI.1974	19.VI.1975	3.VIII.1999
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	14.VI.2001
Australia (ratification)[1]	7.XI.1983	5.II.1984	15.V.1998
Azerbaijan (accession)	16.VII.2004	14.X.2004	
Bahamas (accession)	22.VII.1976	20.X.1976	15.V.1998
Bahrain (accession)	3.V.1996	1.VIII.1996	15.V.1998
Barbados (accession)	6.V.1994	4.VIII.1994	7.VII.1999
Belgium (ratification)[1]	12.I.1977	12.IV.1977	6.X.1999
Belize (accession)	2.IV.1991	1.VII.1991	27.XI.1999
Benin (accession)	1.XI.1985	30.I.1986	
Brazil (ratification)	17.XII.1976	17.III.1977	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	31.I.2003
Cambodia (accession)	28.XI.1994	26.II.1995	
Cameroon (ratification)	14.V.1984	12.VIII.1984	15.X.2002
Canada (accession)	24.I.1989	24.IV.1989	29.V.1999
Chile (accession)	2.VIII.1977	31.X.1977	
China[2] **(accession)**[1]	30.I.1980	29.IV.1980	5.I.2000
Colombia (accession)	26.III.1990	24.VI.1990	25.I.2006
Costa Rica (accession)	8.XII.1997	8.III.1998	
Côte d'Ivoire (ratification)	21.VI.1973	19.VI.1975	
Croatia (succession)	–	8.X.1991	30.VII.1999
Cyprus (accession)	19.VI.1989	17.IX.1989	15.V.1998
Denmark (accession)	2.IV.1975	19.VI.1975	15.V.1998
Djibouti (accession)	1.III.1990	30.V.1990	17.V.2002
Dominican Republic (ratification)	2.IV.1975	19.VI.1975	
Ecuador (accession)	23.XII.1976	23.III.1977	
Egypt (accession)	3.II.1989	4.V.1989	
El Salvador (accession)	2.I.2002	2.IV.2002	
Equatorial Guinea (accession)	24.IV.1996	23.VII.1996	
Estonia (accession)	1.XII.1992	1.III.1993	6.VIII.2006
Fiji (accession)	15.VIII.1972	19.VI.1975	30.XI.2000
Finland (ratification)	10.X.1980	8.I.1981	15.V.1998

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
France (ratification)	17.III.1975	19.VI.1975	15.V.1998
Gabon (accession)	21.I.1982	21.IV.1982	31.V.2003
Gambia (accession)	1.XI.1991	30.I.1992	
Georgia (accession)	19.IV.1994	18.VII.1994	
Germany[3] (ratification)[1]	20.V.1975	18.VIII.1975[4]	15.V.1998
Ghana (ratification)	20.IV.1978	19.VII.1978	
Greece (accession)	29.VI.1976	27.IX.1976	15.V.1998
Guatemala (acceptance)[1]	20.X.1982	18.I.1983	
Guyana (accession)	10.XII.1997	10.III.1998	
Honduras (accession)	2.XII.1998	2.III.1999	
Iceland (ratification)	17.VII.1980	15.X.1980	10.II.2001
India (accession)	1.V.1987	30.VII.1987	21.VI.2001
Indonesia (ratification)	1.IX.1978	30.XI.1978	
Ireland (ratification)	19.XI.1992	17.II.1993	15.V.1998
Italy (ratification)[1]	27.II.1979	28.V.1979	8.X.2000
Japan (accession)	3.VI.1976	1.IX.1976	15.V.1998
Jordan (accession)	14.X.2003	12.I.2004	
Kazakhstan (accession)	7.III.1994	5.VI.1994	
Kenya (accession)	15.XII.1992	15.III.1993	7.VII.2001
Kuwait (accession)	2.IV.1981	1.VII.1981	
Latvia (accession)	10.VII.1992	8.X.1992	
Lebanon (accession)	9.IV.1974	19.VI.1975	
Liberia (accession)	25.IX.1972	19.VI.1975	15.V.1998
Libyan Arab Jamahiriya (accession)	28.IV.2005	26.VII.2005	
Luxembourg (accession)	14.II.1991	15.V.1991	21.XI.2006
Malaysia (accession)	6.I.1995	6.IV.1995	9.VI.2005
Maldives (accession)	16.III.1981	14.VI.1981	
Malta (accession)	27.IX.1991	26.XII.1991	6.I.2001
Marshall Islands (accession)	24.I.1994	24.IV.1994	15.V.1998
Mauritania (accession)	17.XI.1995	15.II.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	6.XII.2000
Mexico (accession)	13.V.1994	11.VIII.1994	15.V.1998
Monaco (ratification)	21.VIII.1975	19.XI.1975	15.V.1998
Mongolia (accession)	3.III.2003	1.VI.2003	
Morocco (accession)	11.IV.1974	19.VI.1975	25.X.2001
Mozambique (accession)	23.XII.1996	23.III.1997	26.IV.2003
Netherlands (ratification)	9.IX.1975	8.XII.1975	15.V.1998
New Zealand (accession)	27.IV.1976	26.VII.1976	25.VI.1999
Nicaragua (accession)	4.VI.1996	2.IX.1996	
Nigeria (accession)	7.V.1981	5.VIII.1981	24.V.2003
Norway (accession)	21.III.1975	19.VI.1975	15.V.1998
Oman (accession)	24.I.1985	24.IV.1985	15.V.1998
Panama (ratification)	7.I.1976	6.IV.1976	11.V.2000
Papua New Guinea (accession)	12.III.1980	10.VI.1980	23.I.2002
Peru (accession)[1]	24.II.1987	25.V.1987	
Poland (ratification)	18.III.1976	16.VI.1976	21.XII.2000
Portugal (ratification)	26.XI.1976	24.II.1977	1.XII.2005

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Qatar (accession)	2.VI.1988	31.VIII.1988	20.XI.2002
Republic of Korea (accession)	18.XII.1978	18.III.1979	15.V.1998
Russian Federation[5] **(accession)**[1]	24.VI.1975	22.IX.1975	20.III.2001
Saint Kitts and Nevis (accession)[1]	14.IX.1994	13.XII.1994	
Saint Vincent and the Grenadines (accession)	19.IV.1989	18.VII.1989	9.X.2002
Sao Tome and Principe (accession)	29.X.1998	27.I.1999	
Saudi Arabia (accession)[1]	15.IV.1993	14.VII.1993	
Senegal (accession)	27.III.1972	19.VI.1975	
Serbia and Montenegro (succession)	–	27.IV.1992	
Seychelles (accession)	12.IV.1988	11.VII.1988	23.VII.2000
Sierra Leone (accession)	13.VIII.1993	11.XI.1993	4.VI.2002
Singapore (accession)	16.IX.1981	15.XII.1981	31.XII.1998
Slovenia (succession)	–	25.VI.1991	19.VII.2001
South Africa (accession)	17.III.1976	15.VI.1976	1.X.2005
Spain (ratification)	8.XII.1975	7.III.1976	15.V.1998
Sri Lanka (accession)	12.IV.1983	11.VII.1983	22.I.2000
Sweden (ratification)	17.III.1975	19.VI.1975	15.V.1998
Switzerland (ratification)	15.XII.1987	14.III.1988	15.V.1998
Syrian Arab Republic (accession)[1]	6.II.1975	19.VI.1975	
Tonga (accession)	1.II.1996	1.V.1996	10.XII.2000
Tunisia (accession)	4.V.1976	2.VIII.1976	15.V.1998
Tuvalu (succession)	–	1.X.1978	30.VI.2005
United Arab Emirates (accession)	15.XII.1983	14.III.1984	
United Kingdom (ratification)	17.III.1975	19.VI.1975	15.V.1998
Vanuatu (accession)	2.II.1983	3.V.1983	18.II.2000
Venezuela (accession)	21.I.1992	20.IV.1992	22.VII.1999
Yemen (accession)	6.III.1979	4.VI.1979	

Number of Contracting States: 45

The Convention applies provisionally in respect of the following States:
Kiribati
Solomon Islands

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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. Effective date of denunciation: 5.I.2000.

[3] On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded to the Convention on 13.III.1978.

[4] In accordance with the intention expressed by the Government of the Federal Republic of Germany and based on its interpretation of article XV of the Convention.

[5] As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

Declarations, Reservations and Statements

Australia

The instrument of ratification of the Commonwealth of Australia was accompanied by the following declarations:

"Australia has taken note of the reservation made by the Union of Soviet Socialist Republics on its accession on 24 June 1975 to the Convention, concerning article XI(2) of the Convention. Australia wishes to advise that is unable to accept the reservation. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. It is also Australia's understanding that the above-mentioned reservation is not intended to have the effect that the Union of Soviet Socialist Republics may claim judicial immunity of a foreign State with respect to ships owned by it, used for commercial purposes and operated by a company which in the Union of Soviet Socialist Republic is registered as the ship's operator, when actions for compensation are brought against the company in accordance with the provisions of the Convention. Australia also declares that, while being unable to accept the Soviet reservation, it does not regard that fact as precluding the entry into force of the Convention as between the Union of Soviet Socialist Republics and Australia."

"Australia has taken note of the declaration made by the German Democratic Republic on its accession on 13 March 1978 to the Convention, concerning article XI(2) of the Convention. Australia wishes to declare that it cannot accept the German Democratic Republic's position on sovereign immunity. Australia considers that international law does not grant a State the right to immunity from the jurisdiction of the courts of another State in proceedings concerning civil liability in respect of a State-owned ship used for commercial purposes. Australia also declares that, while being unable to accept the declaration by the German Democratic Republic, it does not regard that fact as precluding the entry into force of the Convention as between the German Democratic Republic and Australia."

Belgium

The instrument of ratification of the Kingdom of Belgium was accompanied by a Note Verbale (in the French language) the text of which reads as follows:

[Translation]

"...The Government of the Kingdom of Belgium regrets that it is unable to accept the reservation of the Union of Soviet Socialist Republics, dated 24 June 1975, in respect of article XI, paragraph 2 of the Convention.

The Belgian Government considers that international law does not authorize States to claim judicial immunity in respect of vessels belonging to them and used by them for commercial purposes.

Belgian legislation concerning the immunity of State-owned vessels is in accordance with the provisions of the International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships, done at Brussels on 10 April 1926, to which Belgium is a Party.

The Belgian Government assumes that the reservation of the USSR does not in any way affect the provisions of article 16 of the Maritime Agreement between the Belgian-Luxembourg Economic Union and the Union of Soviet Socialist Republics,

of the Protocol and the Exchange of Letters, signed at Brussels on 17 November 1972. The Belgian Government also assumes that this reservation in no way affects the competence of a Belgian court which, in accordance with article IX of the aforementioned International Convention, is seized of an action for compensation for damage brought against a company registered in the USSR in its capacity of operator of a vessel owned by that State, because the said company, by virtue of article I, paragraph 3 of the same Convention, is considered to be the 'owner of the ship' in the terms of this Convention.
The Belgian Government considers, however, that the Soviet reservation does not impede the entry into force of the Convention as between the Union of Soviet Socialist Republics and the Kingdom of Belgium."

China

At the time of depositing its instrument of accession the Representative of the People's Republic of China declared "that the signature to the Convention by Taiwan authorities is illegal and null and void".

German Democratic Republic

The instrument of accession of the German Democratic Republic was accompanied by the following statement and declarations (in the German language):
[Translation]
"In connection with the declaration made by the Government of the Federal Republic of Germany on 20 May 1975 concerning the application of the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 to Berlin (West), it is the understanding of the German Democratic Republic that the provisions of the Convention may be applied to Berlin (West) only inasmuch as this is consistent with the Quadripartite Agreement of 3 September 1971, under which Berlin (West) is no constituent part of the Federal Republic of Germany and must not be governed by it."
"The Government of the German Democratic Republic considers that the provisions of article XI, paragraph 2, of the Convention are inconsistent with the principle of immunity of States."[(1)]
The Government of the German Democratic Republic considers that the provisions of article XIII, paragraph 2, of the Convention are inconsistent with the principle that all States pursuing their policies in accordance with the purposes and principles of the Charter of the United Nations shall have the right to become parties to conventions affecting the interests of all States.
The position of the Government of the German Democratic Republic on article XVII of the Convention, as far as the application of the Convention to colonial and other dependent territories is concerned, is governed by the provisions of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960) proclaiming the necessity of bringing a speedy and unconditional end to colonialism in all its forms and manifestations."

[(1)] The following Governments do not accept the reservation contained in the instrument of accession of the Government of the German Democratic Republic, and the texts of their Notes to this effect were circulated by the depositary: Denmark, France, the Federal Republic of Germany, Japan, Norway, Sweden and the United Kingdom.

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany was accompanied by a declaration (in the English language) that "with effect from the day on which the Convention enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)".

Guatemala

The instrument of acceptance of the Republic of Guatemala contained the following declaration (in the Spanish language):

[Translation]

"It is declared that relations that may arise with Belize by virtue of this accession can in no sense be interpreted as recognition by the State of Guatemala of the independence and sovereignty unilaterally decreed by Belize."

Italy

The instrument of ratification of the Italian Republic was accompanied by the following statement (in the Italian language):

[Translation]

"The Italian Government wishes to state that it has taken note of the reservation put forward by the Government of the Soviet Union (on the occasion of the deposit of the instrument of accession on 24 June 1975) to article XI(2) of the International Convention on civil liability for oil pollution damage, adopted in Brussels on 29 November 1969.

The Italian Government declares that it cannot accept the aforementioned reservation and, with regard to the matter, observes that, under international law, the States have no right to jurisdictional immunity in cases where vessels of theirs are utilized for commercial purposes.

The Italian Government therefore considers its judicial bodies competent - as foreseen by articles IX and XI(2) of the Convention - in actions for the recovery of losses incurred in cases involving vessels belonging to States employing them for commercial purposes, as indeed in cases where, on the basis of article I(3), it is a company, running vessels on behalf of a State, that is considered the owner of the vessel.

The reservation and its non-acceptance by the Italian Government do not, however, preclude the coming into force of the Convention between the Soviet Union and Italy, and its full implementation, including that of article XI(2)."

Peru [(2)]

The instrument of accession of the Republic of Peru contained the following reservation (in the Spanish language):

[Translation]

"With respect to article II, because it considers that the said Convention will be understood as applicable to pollution damage caused in the sea area under the

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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 provisions of article XI, paragraph 2 of the Convention, as they contradict the principle

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jurisdiction of the Peruvian State. In this respect the Federal Government points again to the fact that according to international law no coastal State can claim unrestricted sovereignty and jurisdiction beyond its territorial sea, and that the maximum breadth of the territorial sea according to international law is 12 nautical miles."

The depositary received the following communication dated 4 November 1987 from the Permanent Mission of the Union of Soviet Socialist Republics to the International Maritime Organization (in the Russian language):

[Translation]

"...the Soviet Side has the honour to confirm its position in accordance with which a coastal State has no right to claim an extension of its sovereignty to sea areas beyond the outer limit of its territorial waters the maximum breadth of which in accordance with international law cannot exceed 12 nautical miles."

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".

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(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

(CLC PROT 1976)

Done at London,
19 November 1976
Entered into force: 8 April 1981

Protocole à la Convention Internationale sur la
Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures

(CLC PROT 1976)

Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 8 avril 1981

Contracting States
as at 30.VI.2006

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	
Australia (accession)	7.XI.1983	5.II.1984	
Azerbaijan (accession)	16.VII.2004	14.X.2004	
Bahamas (acceptance)	3.III.1980	8.IV.1981	
Bahrain (accession)	3.V.1996	1.VIII.1996	
Barbados (accession)	6.V.1994	4.VIII.1994	
Belgium (accession)	15.VI.1989	13.IX.1989	
Belize (accession)	2.IV.1991	1.VII.1991	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	
Cambodia (accession)	8.VI.2001	6.IX.2001	
Cameroon (accession)	14.V.1984	12.VIII.1984	
Canada (accession)	24.I.1989	24.IV.1989	
China[4] **(accession)**[1]	29.IX.1986	28.XII.1986	22.VIII.2003
Colombia (accession)	26.III.1990	24.VI.1990	25.I.2006
Costa Rica (accession)	8.XII.1997	8.III.1998	
Cyprus (accession)	19.VI.1989	17.IX.1989	
Denmark (accession)	3.VI.1981	1.IX.1981	
Egypt (accession)	3.II.1989	4.V.1989	
El Salvador (accession)	2.I.2002	2.IV.2002	
Finland (accession)	8.I.1981	8.IV.1981	
France (approval)	7.XI.1980	8.IV.1981	
Georgia (accession)	25.VIII.1995	23.XI.1995	
Germany (ratification)[2]	28.VIII.1980	8.IV.1981	
Greece (accession)	10.V.1989	8.VIII.1989	
Iceland (accession)	24.III.1994	22.VI.1994	
India (accession)	1.V.1987	30.VII.1987	
Ireland (accession)	19.XI.1992	17.II.1993	15.V.1998
Italy (accession)	3.VI.1983	1.IX.1983	
Japan (accession)	24.VIII.1994	22.XI.1994	

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Kuwait (accession)	1.VII.1981	29.IX.1981	
Liberia (accession)	17.II.1981	8.IV.1981	
Luxembourg (accession)	14.II.1991	15.V.1991	
Maldives (accession)	14.VI.1981	12.IX.1981	
Malta (accession)	27.IX.1991	26.XII.1991	6.I.2001
Marshall Islands (accession)	24.I.1994	24.IV.1994	
Mauritania (accession)	17.XI.1995	15.II.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	
Mexico (accession)	13.V.1994	11.VIII.1994	
Netherlands (accession)	3.VIII.1982	1.XI.1982	
Nicaragua (accession)	4.VI.1996	2.IX.1996	
Norway (accession)	17.VII.1978	8.IV.1981	
Oman (accession)	24.I.1985	24.IV.1985	
Peru (accession)	24.II.1987	25.V.1987	
Poland (accession)[1]	30.X.1985	28.I.1986	
Portugal (accession)	2.I.1986	2.IV.1986	
Qatar (accession)	2.VI.1988	31.VIII.1988	28.XI.2002
Republic of Korea (accession)	8.XII.1992	8.III.1993	
Russian Federation[3] **(accession)**[1]	2.XII.1988	2.III.1989	
Saudi Arabia (accession)[2]	15.IV.1993	14.VII.1993	
Singapore (accession)	15.XII.1981	15.III.1982	
Spain (accession)	22.X.1981	20.I.1982	
Sweden (ratification)	7.VII.1978	8.IV.1981	
Switzerland (accession)[1]	15.XII.1987	14.III.1988	
United Arab Emirates (accession)	14.III.1984	12.VI.1984	
United Kingdom (ratification)[1]	31.I.1980	8.IV.1981	15.V.1998
Vanuatu (accession)	13.I.1989	13.IV.1989	
Venezuela (accession)	21.I.1992	20.IV.1992	
Yemen (accession)	4.VI.1979	8.IV.1981	

Number of Contracting States: 54

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[1] With a notification under article V(9)(c) of the Convention, as amended by the Protocol.

[2] With a declaration.

[3] As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

[4] Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

States which have denounced the Protocol

	Date of receipt of denunciation	Effective date of denunciation
Australia	22.VI.1988	[date of entry into force of 1984 CLC Protocol]
China (in respect of HKAR)	22.VIII/2002	22.VIII.2003
Colombia	25.I.2005	25.I.2006
Malta	6.I.2000	6.I.2001
Qatar	28.XI.2001	28.XI.2002
United Kingdom	12.V.1997	12.V.1998

Declarations, Reservations and Statements

Federal Republic of Germany

The instrument of ratification of the Federal Republic of Germany contains the following declaration (in the English language):
"...with effect from the date on which the Protocol enters into force for the Federal Republic of Germany it shall also apply to Berlin (West)".

Saudi Arabia

The instrument of accession of the Kingdom of Saudi Arabia contained the following reservation (in the Arabic language):
[Translation]
"However, this accession does not in any way mean or entail the recognition of Israel, and does not lead to entering into any dealings with Israel; which may be arranged by the above-mentioned Convention and the said Protocol".

Notifications

Article V(9)(c) of the Convention, as amended by the Protocol

China

"...the value of the national currency, in terms of SDR, of the People's Republic of China is calculated in accordance with the method of valuation applied by the International Monetary Fund."

Poland

"Poland will now calculate financial liabilities in cases of limitation of the liability of owners of sea-going ships and liability under the International Oil Pollution Compensation Fund in terms of the Special Drawing Right, as defined by the International Monetary Fund.

However, those SDR's will be converted according to the method instigated by Poland, which is derived from the fact that Poland is not a member of the International Monetary Fund.
The method of conversion is that the Polish National Bank will fix a rate of exchange of the SDR to the Polish zloty through the conversion of the SDR to the United States dollar, according to the current rates of exchange quoted by Reuter. The US dollars will then be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies.
The above method of calculation is in accordance with the provisions of article II paragraph 9 item "a" (in fine) of the Protocol to the International Convention on Civil Liability for Oil Pollution Damage and article II of the Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage."

Switzerland

[Translation]
"The Swiss Federal Council declares, with reference to article V, paragraph 9(a) and (c) of the Convention, introduced by article II of the Protocol of 19 November 1976, that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:
The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette.

USSR

"In accordance with article V, paragraph 9 "c" of the International Convention on Civil Liability for Oil Pollution Damage, 1969 in the wording of article II of the Protocol of 1976 to this Convention it is declared that the value of the unit of "The Special Drawing Right" expressed in Soviet roubles is calculated on the basis of the US dollar rate in effect at the date of the calculation in relation to the unit of "The Special Drawing Right", determined by the International Monetary Fund, and the US dollar rate in effect at the same date in relation to the Soviet rouble, determined by the State Bank of the USSR".

United Kingdom

"...in accordance with article V(9)(c) of the Convention, as amended by article II(2) of the Protocol, the manner of calculation employed by the United Kingdom pursuant to article V(9)(a) of the Convention, as amended, shall be the method of valuation applied by the International Monetary Fund.

Protocol of 1992 to amend the International Convention on

Civil liability for oil pollution damage, 1969

(CLC PROT 1992)

Done at London,
27 November 1992
Entry into force: 30 May 1996

Protocole à la Convention Internationale sur la

Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures, 1969

(CLC PROT 1992)

Signé à Londres,
le 27 novembre 1992
Entrée en vigueur: 30 May 1996

	Date of deposit of instrument	Date of entry into force
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.XI.1998	27.XI.1999
Brunei Darussalam (accession)	31.I.2002	31.I.2003
Bulgaria (accession)	28.XI.2003	28.XI.2004
Cambodia (accession)	8.VI.2001	8.VI.2002
Cameroon (accession)	15.X.2001	15.X.2002
Canada (accession)	29.V.1998	29.V.1999
Cape Verde (accession)	4.VII.2003	4.VII.2004
Chile (accession)	29.V.2002	29.V.2003
China (accession)[1, 4]	5.I.1999	5.I.2000
Colombia (accession)	19.XI.2001	19.XI.2002
Comoros (accession)	5.I.2000	5.I.2001
Congo (accession)	7.VIII.2002	7.VIII.2003
Croatia (accession)	12.I.1998	12.I.1999
Cyprus (accession)	12.V.1997	12.V.1998
Denmark (ratification)	30.V.1995	30.V.1996
Djibouti (accession)	8.I.2001	8.I.2002
Dominica (accession)	31.VIII.2001	31.VIII.2002
Dominican Republic (accession)	24.VI.1999	24.VI.2000
Egypt (accession)	21.IV.1995	30.V.1996
El Salvador (accession)	2.I.2002	2.I.2003
Estonia (accession)	6.VII.2004	6.VII.2005

	Date of deposit of instrument	Date of entry into force
Fiji (accession)	30.XI.1999	30.XI.2000
Finland (acceptance)	24.XI.1995	24.XI.1996
France (approval)	29.IX.1994	30.V.1996
Gabon (accession)	31.V.2002	31.V.2003
Georgia (accession)	18.IV.2000	18.IV.2001
Germany (ratification)[1]	29.IX.1994	30.V.1996
Ghana (accession)	3.II.2003	3.II.2004
Greece (ratification)	9.X.1995	9.X.1996
Grenada (accession)	7.I.1998	7.I.1999
Guinea (accession)	2.X.2002	2.X.2003
Iceland (accession)	13.XI.1998	13.XI.1999
India (accession)	15.XI.1999	15.XI.2000
Indonesia (accession)	6.VII.1999	6.VII.2000
Ireland (accession)[2]	15.V.1997	16.V.1998
Israel (accession)	21.X.2004	21.X.2005
Italy (accession)	16.IX.1999	16.IX.2000
Jamaica (accession)	6.VI.1997	6.VI.1998
Japan (accession)	24.VIII.1994	30.V.1996
Kenya (accession)	2.II.2000	2.II.2001
Kuwait (accession)	16.IV.2004	16.IV.2005
Latvia (accession)	9.III.1998	9.III.1999
Lebanon (accession)	30.III.2005	30.III.2006
Liberia (accession)	5.X.1995	5.X.1996
Lithuania (accession)	27.VI.2000	27.VI.2001
Luxembourg (accession)	21.XI.2005	21.XI.2006
Madagascar (accession)	21.V.2002	21.V.2003
Malaysia (accession)	9.VI.2004	9.VI.2005
Maldives (accession)	20.V.2005	20.V.2006
Malta (accession)	6.I.2000	6.I.2001
Marshall Islands (accession)	16.X.1995	16.X.1996
Mauritius (accession)	6.XII.1999	6.XII.2000
Mexico (accession)	13.V.1994	30.V.1996
Moldova (accession)	11.X.2005	11.X.2006
Monaco (ratification)	8.XI.1996	8.XI.1997
Morocco (ratification)	22.VIII.2000	22.VIII.2001
Mozambique (accession)	26.IV.2002	26.IV.2003
Namibia (accession)	18.XII.2002	18.XII.2003
Netherlands (accession)[5, 6]	15.XI.1996	15.XI.1997
New Zealand (accession)[2]	25.VI.1998	25.VI.1999
Nigeria (accession)	24.V.2002	24.V.2003
Norway (ratification)	3.IV.1995	30.V.1996
Oman (accession)	8.VII.1994	30.V.1996
Pakistan (accession)	2.III.2005	2.III.2006
Panama (accession)	18.III.1999	18.III.2000
Papua New Guinea (accession)	23.I.2001	23.I.2002
Peru (accession)	1.IX.2005	1.IX.2006
Philippines (accession)	7.VII.1997	7.VII.1998
Poland (accession)	21.XII.1999	21.XII.2000

	Date of deposit of instrument	Date of entry into force
Portugal (accession)	13.XI.2001	13.XI.2002
Qatar (accession)	20.XI.2001	20.XI.2002
Republic of Korea (accession)[2]	7.III.1997	16.V.1998
Romania (accession)	27.XI.2000	27.XI.2001
Russian Federation (accession)	20.III.2000	20.III.2001
Saudi Arabia (accession)	203.V.2005	23.V.2006
Samoa (accession)	1.II.2002	1.II.2003
St. Kitts and Nevis (accession)	7.X.2004	7.X.2005
St. Lucia (accession)	20.V.2004	20.V.2005
St. Vincent and the Grenadines (accession)	9.X.2001	9.X.2002
Sierra Leone (accession)	4.VI.2001	4.VI.2002
Singapore (accession)	18.IX.1997	18.IX.1998
Slovenia (accession)	19.VII.2000	19.VII.2001
Solomon Island (accession)	30.VI.2004	30.VI.2005
South Africa (accession)	1.X.2004	1.X.2005
Spain (accession)	6.VII.1995	6.VII.1996
Sri Lanka (accession)	22.I.1999	22.I.2000
Sweden (ratification)	25.V.1995	30.V.1996
Switzerland (accession)	4.VII.1996	4.VII.1997
Syria (accession)[2]	22.II.2005	22.II.2006
Tonga (accession)	10.XII.1999	10.XII.2000
Trinidad and Tobago (accession)	6.III.2000	6.III.2001
Tunisia (accession)	29.I.1997	29.I.1998
Turkey (accession)[2]	17.VIII.2001	17.VIII.2002
Tuvalu (accession)	30.VI.2004	30.VI.2005
United Arab Emirates (accession)	19.XI.1997	19.XI.1998
United Kingdom (accession)[3]	29.IX.1994	30.V.1996
United Republic of Tanzania (accession)	19.XI.2002	19.XI.2003
Uruguay (accession)	9.VII.1997	9.VII.1998
Vanuatu (accession)	18.II.1999	18.II.2000
Venezuela (accession)	22.VII.1998	22.VII.1999
Viet Nam (accession)	17.VI.2003	17.VI.2004

Number of Contracting States: 113

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[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	) with effect from 20.2.98
Pitcairn, Henderson, Ducie and Oeno Islands	)
Sovereign Base Areas of Akrotiri and Dhekelia on Cyprus	)
Turks & Caicos Islands	)
Virgin Islands	)
Cayman Islands	)
Gibraltar	) with effect from 15.5.98
St Helena and its Dependencies	)

[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.

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* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

Declarations, Reservations and Statements

Germany

The instrument of ratification of Germany was accompanied by the following declaration:
"The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992."

New 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".

International Convention relating to

Intervention on the high seas in cases of oil pollution casualties, 1969

(Intervention 1969)

Done at Brussels,
29 November 1969
Entry into force: 6 May 1975

Convention Internationale sur

L'intervention en haute mer en cas d'accident entraînant ou pouvant entraîner une pollution par les hydrocarbures, 1969

(Intervention 1969)

Signé a Bruxelles
le 29 Novembre 1969
Entrée en vigueur: 6 Mai 1975

	Date of signature or deposit of of instrument	Date of entry into force or succession
Angola (accession)	4.X.2001	2.I.2002
Argentina (accession)[1]	21.IV.1987	20.VII.1987
Australia (ratification)[1]	7.XI.1983	5.II.1984
Bahamas (accession)	22.VII.1976	20.X.1976
Bangladesh (accession)	6.XI.1981	4.II.1982
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (ratification)	21.X.1971	6.V.1975
Benin (accession)	1.XI.1985	30.I.1986
Bulgaria (accession)[1]	2.XI.1983	31.I.1984
Cameroon (ratification)[1]	14.V.1984	12.VIII.1984
Chile (accession)	28.II.1995	29.V.1995
China (accession) [4, 5]	23.II.1990	24.V.1990
Côte d'Ivoire (ratification)	8.I.1988	7.IV.1988
Croatia (succession)	–	8.X.1991
Cuba (accession)1	5.V.1976	3.VIII.1976
Denmark (signature)	18.XII.1970	6.V.1975
Djibouti (accession)	1.III.1990	30.V.1990
Dominican Republic (ratification)	5.II.1975	6.V.1975
Ecuador (accession)	23.XII.1976	23.III.1977
Egypt (accession)	3.II.1989	4.V.1989
Equatorial Guinea (accession)	24.IV.1996	23.VII.1996
Fiji (accession)	15.VIII.1972	6.V.1975
Finland (ratification)	6.IX.1976	5.XII.1976
France (ratification)	10.IV.1972	6.IV.1975
Gabon (accession)	21.I.1982	21.IV.1982
Georgia (accession)	25.VIII.1995	23.XI.1995
Germany (ratification)[1,2]	7.V.1975	5.VIII.1975
Ghana (ratification)	20.IV.1978	19.VII.1978
Guyana (accession)	10.XII.1997	10.III.1998
Iceland (ratification)	17.VII.1980	15.X.1980

	Date of signature or deposit of of instrument	Date of entry into force or succession
India (accession)	16.VI.2000	14.IX.2000
Ireland (ratification)	21.VIII.1980	19.XI.1980
Iran (Islamic Republic of) (accession)	25.VII.1997	23.X.1997
Italy (ratification)	27.II.1979	28.V.1979
Jamaica (accession)	13.III.1991	11.VI.1991
Japan (acceptance)	6.IV.1971	6.V.1975
Kuwait (accession)	2.IV.1981	1.VII.1981
Latvia (accession)	9.VIII.2001	7.IX.2001
Lebanon (accession)	5.VI.1975	3.IX.1975
Liberia (accession)	25.IX.1972	6.V.1975
Marshall Islands (accession)	16.X.1995	14.I.1996
Mauritania (accession)	24.XI.1997	22.II.1998
Mauritius (accession)	17.XII.2002	17.III.2003
Mexico (accession)	8.IV.1976	7.VII.1976
Monaco (ratification)	24.II.1975	6.V.1975
Morocco (accession)	11.IV.1974	6.V.1975
Namibia (accession)	12.III.2004	10.VI.2004
Netherlands (ratification)	19.IX.1975	18.XII.1975
New Zealand (accession)	26.III.1975	6.V.1975
Nicaragua (accession)	15.XI.1994	13.II.1995
Nigeria (accession)	24.II.2004	24.V.2004
Norway (accession)	12.VII.1972	6.V.1975
Oman (accession)	24.I.1985	24.IV.1985
Pakistan (accession)	13.I.1995	13.IV.1995
Panama (ratification)	7.I.1976	6.IV.1976
Papua New Guinea (accession)	12.III.1980	10.VI.1980
Poland (ratification)	1.VI.1976	30.VIII.1976
Portugal (ratification)	15.II.1980	15.V.1980
Qatar (accession)	2.VI.1988	31.VIII.1988
Russian Federation (accession)[1,3]	30.XII.1974	6.V.1975
St. Kitts and Nevis (accession)	7.X.2004	5.I.2005
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent & the Grenadines (accession)	12.V.1999	10.VIII.1999
Senegal (accession)	27.III.1972	6.V.1975
Serbia and Montenegro (succession)	–	27.IV.1992
Slovenia (succession)	–	25.VI.1991
South Africa (accession)	1.VII.1986	29.IX.1986
Spain (ratification)	8.XI.1973	6.V.1975
Sri Lanka (accession)	12.IV.1983	11.VII.1983
Suriname (succession)	–	25.XI.1975
Sweden (acceptance)	8.II.1973	6.IV.1975
Switzerland (ratification)	15.XII.1987	14.III.1988
Syrian Arab Republic (accession)[1]	6.II.1975	6.V.1975
Tonga (accession)	1.II.1996	1.V.1996
United Republic of Tanzania (accession)	16.V.2006	14.VIII.2006
Trinidad and Tobago (accession)	6.III.2000	4.VI.2000

	Date of signature or deposit of of instrument	Date of entry into force or succession
Tunisia (accession)	4.V.1976	2.VIII.1976
Ukraine (succession)	–	17.XII.1993
United Arab Emirates (accession)	15.XII.l983	14.III.l984
United Kingdom (ratification)	12.I.l97l	6.V.l975
United States (ratification)	21.II.l974	6.V.l975
Vanuatu (accession)	14.IX.1992	13.XII.1992
Yemen (accession)	6.III.l979	4.VI.l979

Number of Contracting States: 83

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[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 Cayman Islands Falkland Islands and Dependencies** Montserrat Pitcairn, Henderson, Ducie and Oeno Islands St. Helena and Dependencies	8.IX.1982	8.IX.1982
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, Virgin Islands, American Samoa, Trust Territories of the Pacific Islands	9.IX.1975	6.V.1975

The Netherlands notified the depositary that it extended the Convention to the following territories:

Suriname***, Netherlands Antilles	19.IX.1975	18.XII.1975
Aruba (with effect from 1 January 1986)	–	–

* Ceased to apply to Hong Kong with effect from 1 July 1997.

** The depositary received the following communication dated 12 August 1986 from the Argentine delegation to the International Maritime Organization:

[Translation]

"... the Argentine Government rejects the extension made by the United Kingdom of Great Britain and Northern Ireland of the application to the Malvinas Islands, South Georgia and South Sandwich Islands of the ... International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties ... and reaffirms the rights of sovereignty of the Argentine Republic over those archipelagos which form part of its national territory.

"The General Assembly of the United Nations has adopted resolutions 2065(XX), 3160(XXVIII), 31/49, 37/9, 38/12 and 39/6 which recognize the existence of a sovereignty dispute relating to the question of the Malvinas Islands, urging the Argentine Republic and the United Kingdom to resume negotiations in order to find, as soon as possible, a peaceful and definitive solution to the dispute through the good offices of the Secretary-General of the United Nations who is requested to inform the General Assembly on the progress made. Similarly, the General Assembly of the United Nations at its fortieth session adopted resolution 40/21 of 27 November 1985 which again urges both parties to resume the said negotiations.

"... the Argentine Government also rejects the extension of its application to the so-called "British Antarctic Territory" made by the United Kingdom of Great Britain and Northern Ireland and, with respect to such extension and to any other declaration that may be made, reaffirms the rights of the Republic over the Argentine Antarctic Sector between longitude 25° and 74° west and latitude 60° south, including those rights relating to its sovereignty or corresponding maritime jurisdiction. It also recalls the safeguards concerning claims to territorial sovereignty in Antarctica provided in article IV of the Antarctic Treaty signed at Washington on 1 December 1959 to which the Argentine Republic and the United Kingdom of Great Britain and Northern Ireland are Parties."

The depositary received the following communication dated 3 February 1987 from the United Kingdom Foreign and Commonwealth Office:

"The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the statement made by the Argentine Republic as regards the Falkland Islands and South Georgia and the South Sandwich Islands. The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and South Georgia and the South Sandwich Islands and, accordingly, their right to extend the application of the Treaties to the Falkland Islands and South Georgia and the South Sandwich Islands.

"Equally, while noting the Argentine reference to the provisions of Article IV of the Antarctic Treaty signed at Washington on 1 December 1959, the Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the sovereignty of the United Kingdom over the British Antarctic Territory, and to the right to extend the application of the Treaties in question to that Territory."

*** Has since become the independent State of Suriname and a Contracting State to the Convention.

Protocol relating to
Intervention on the high seas in cases of pollution by substances other than oil, 1973, as amended

(Intervention Prot. 1973)

Done at London,
2 November 1973
Entry into force: 30 March 1983

Protocole de 1973 sur
L'intervention en haute mer en cas de pollution par des substances autres que les hydrocarbures

(Intervention Prot. 1973)

Signé a London
le 2 Novembre 1973
Entrée en vigueur: 30 Mars 1983

	Date of deposit of instrument	Date of entry into force or succession
Australia (accession)[1]	7.XI.1983	5.II.1984
Bahamas (accession)	5.III.1981	30.III.1983
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (ratification)	9.IX.1982	30.III.1983
Chile (accession)	28.II.1995	29.V.1995
China (accession)[3, 4]	23.II.1990	24.V.1990
Croatia (succession)	–	8.X.1991
Denmark (signature)	9.V.1983	7.VIII.1983
Egypt (accession)	3.II.1989	4.V.1989
Finland (ratification)	4.VIII.1986	2.XI.1986
France (ratification)	31.XII.1985	31.III.1986
Georgia (accession)	25.VIII.1995	23.XI.1995
Germany (ratification)[1,2]	21.VIII.1985	19.XI.1985
Iran (Islamic Republic of) (accession)	25.VII.1997	23.X.1997
Ireland (accession)	6.I.1995	6.IV.1995
Italy (ratification)	1.X.1982	30.III.1983
Jamaica (accession)	13.III.1991	11.VI.1991
Latvia (accession)	9.VIII.2001	7.IX.2001
Liberia (accession)	17.II.1981	30.III.1983
Marshall Islands (accession)	16.X.1995	14.I.1996
Mauritania (accession)	24.XI.1997	22.II.1998
Mauritius (accession)	6.XI.2003	4.II.2004
Mexico (accession)	11.IV.1980	30.III.1983
Monaco (accession)	31.III.2005	29.VI.2005
Morocco (accession)	30.I.2001	30.IV.2001
Namibia (accession)	12.III.2004	10.VI.2004
Netherlands (ratification)	10.IX.1980	30.III.1983
Nicaragua (accession)	15.XI.1994	13.II.1995
Norway (accession)	15.VII.1980	30.III.1983
Oman (accession)	24.I.1985	24.IV.1985
Pakistan (accession)	13.I.1995	13.IV.1995
Poland (ratification)	10.VII.1981	30.III.1983

	Date of deposit of instrument	Date of entry into force or succession
Portugal (accession)	8.VII.l987	6.X.l987
Russian Federation (acceptance)[2]	30.XII.l982	30.III.l983
Serbia and Montenegro (succession)	–	27.IV.1992
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent & the Grenadines (accession)	12.V.1999	10.VIII.1999
Slovenia (succession)	---	25.VI.1991
South Africa (accession)	25.IX.1997	24.XII.1997
Spain (accession)	14.III.l994	12.VI.l994
Sweden (ratification)	28.VI.l976	30.III.l983
Switzerland (accession)	15.XII.1987	14.III.1988
Tonga (accession)	1.II.1996	1.V.1996
Tunisia (accession)	4.V.1976	30.III.l983
United Kingdom (ratification)[1]	5.XI.l979	30.III.l983
United States (ratification)	7.IX.l978	30.III.l983
Vanuatu (accession)	14.IX.1992	13.XII.1992
Yemen (accession)	6.III.l979	30.III.l983

Number of Contracting States: 48

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[1] With a declaration or reservation.

[2] As from 26 December 1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

[3] Applies to the Hong Kong Special Administrative Region with effect from 1 July 1997.

[4] Applies to the Macao Special Administrative Region with effect from 24 June 2005.

The United Kingdom declared ratification to be effective also in respect of:		
Anguilla	)	
Bermuda	)	
British Antarctic Territory*	)	
British Virgin Islands	)	
Cayman Islands	)	
Falkland Islands and Dependencies*	)	
Hong Kong**	)	
Montserrat	)	30.III.l983
Pitcairn, Henderson, Ducie and Oeno Islands	)	
St. Helena and Dependencies	)	
Turks and Caicos Islands	)	
United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus	)	
Isle of Man	)	27.VI.1995
The Netherlands declared ratification to be effective also in respect of:		
Netherlands Antilles	)	30.III. 1983
Aruba (with effect from 1 January 1986)	)	

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1 July 1997.

International Convention on the

Establishment of an International Fund for compensation for oil pollution damage

(FUND 1971)

Done at Brussels, 18 December 1971
Entered into force: 16 October 1978

Convention Internationale portant

Création d'un Fonds International d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS 1971)

Signée à Bruxelles, le 18 decembre 1971
Entrée en vigueur: 16 octobre 1978

Cessation: 2.XII.2002
Contracting States at time of cessation of Convention

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Albania (accession)	6.IV.1994	5.VII.1994	
Algeria (ratification)	2.VI.1975	16.X.1978	3.VIII.1999
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	14.VI.2001
Australia (accession)	10.X.1994	8.I.1995	15.V.1998
Bahamas (accession)	22.VII.1976	16.X.1978	15.V.1998
Bahrain (accession)	3.V.1996	1.VIII.1996	15.V.1998
Albania (accession)	6.IV.1994	5.VII.1994	
Algeria (ratification)	2.VI.1975	16.X.1978	3.VIII.1999
Antigua and Barbuda (accession)	23.VI.1997	21.IX.1997	14.VI.2001
Australia (accession)	10.X.1994	8.I.1995	15.V.1998
Bahamas (accession)	22.VII.1976	16.X.1978	15.V.1998
Bahrain (accession)	3.V.1996	1.VIII.1996	15.V.1998
Barbados (accession)	6.V.1994	4.VIII.1994	7.VII.1999
Belgium (ratification)	1.XII.1994	1.III.1995	6.X.1999
Benin (accession)	1.XI.1985	30.I.1986	
Brunei Darussalam (accession)	29.IX.1992	28.XII.1992	31.I.2003
Cameroon (accession)	14.V.1984	12.VIII.1984	15.X.2002
Canada (accession)[1]	24.I.1989	24.IV.1989	29.V.1999
China[2]	–	1.VII.1997	5.I.2000
Colombia (accession)	13.III.1997	11.VI.1997	
Côte d'Ivoire (accession)	5.X.1987	3.I.1988	
Croatia (succession)	–	8.X.1991	30.VII.1999
Cyprus (accession)	26.VII.1989	24.X.1989	15.V.1998
Denmark (accession)	2.IV.1975	16.X.1978	15.V.1998
Djibouti (accession)	1.III.1990	30.V.1990	17.V.2002
Estonia (accession)	1.XII.1992	1.III.1993	
Fiji (accession)	4.III.1983	2.VI.1983	30.XI.2000
Finland (ratification)	10.X.1980	8.I.1981	15.V.1998
France (accession)	11.V.1978	16.X.1978	15.V.1998

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Gabon (accession)	21.I.1982	21.IV.1982	
Gambia (accession)	1.XI.1991	30.I.1992	
Germany (ratification)[1]	30.XII.1976	16.X.1978	15.V.1998
Ghana (ratification)	20.IV.1978	16.X.1978	
Greece (accession)	16.XII.1986	16.III.1987	15.V.1998
Guyana (accession)	10.XII.1997	10.III.1998	
Iceland (accession)	17.VII.1980	15.X.1980	10.II.2001
India (accession)	10.VII.1990	8.X.1990	21.VI.2001
Indonesia (accession)	1.IX.1978	30.XI.1978	26.VI.1999
Ireland (ratification)	19.XI.1992	17.II.1993	15.V.1998
Italy (accession)	27.II.1979	28.V.1979	8.X.2000
Japan (ratification)	7.VII.1976	16.X.1978	15.V.1998
Kenya (accession)	15.XII.1992	15.III.1993	7.VII.2001
Kuwait (accession)	2.IV.1981	1.VII.1981	
Liberia (accession)	25.IX.1972	16.X.1978	15.V.1998
Malaysia (accession)	6.I.1995	6.IV.1995	
Maldives (accession)	16.III.1981	14.VI.1981	
Malta (accession)	27.IX.1991	26.XII.1991	6.I.2001
Marshall Islands (accession)	30.XI.1994	28.II.1995	15.V.1998
Mauritania (accession)	17.XI.1995	15.II.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	6.XII.2000
Mexico (accession)	13.V.1994	11.VIII.1994	15.V.1998
Monaco (accession)	23.VIII.1979	21.XI.1979	15.V.1998
Morocco (accession)	31.XII.1992	31.III.1993	25.X.2001
Mozambique (accession)	23.XII.1996	23.III.1997	26.IV.2003
Netherlands (approval)	3.VIII.1982	1.XI.1982	15.V.1998
New Zealand (accession)[3]	22.XI.1996	20.II.1997	25.VI.1999
Nigeria (accession)	11.IX.1987	10.XII.1987	
Norway (ratification)	21.III.1975	16.X.1978	15.V.1998
Oman (accession)	10.V.1985	8.VIII.1985	15.V.1998
Panama (accession)	18.III.1999	16.VI.1999	11.V.2000
Papua New Guinea (accession)	12.III.1980	10.VI.1980	23.I.2002
Poland (ratification)	16.IX.1985	15.XII.1985	21.XII.2000
Portugal (ratification)	11.IX.1985	10.XII.1985	
Qatar (accession)	2.VI.1988	31.VIII.1988	20.XI.2002
Republic of Korea (accession)	8.XII.1992	8.III.1993	15.V.1998
Russian Federation (accession)[4]	17.VI.1987	15.IX.1987	20.III.2001
Saint Kitts and Nevis (accession)	14.IX.1994	13.XII.1994	
Seychelles (accession)	12.IV.1988	11.VII.1988	23.VII.2000
Sierra Leone (accession)	13.VIII.1993	11.XI.1993	4.VI.2002
Slovenia (succession)	–	25.VI.1991	19.VII.2001
Spain (accession)	8.X.1981	6.I.1982	15.V.1998
Sri Lanka (accession)	12.IV.1983	11.VII.1983	22.I.2000
Sweden (ratification)	17.III.1975	16.X.1978	15.V.1998
Switzerland (ratification)	4.VII.1996	2.X.1996	15.V.1998
Syrian Arab Republic (accession)[1]	6.II.1975	16.X.1978	
Tonga (accession)	1.II.1996	1.V.1996	10.XII.2000
Tunisia (accession)	4.V.1976	16.X.1978	15.V.1998

	Date of deposit of instrument	Date of entry into force or succession	Effective date of denunciation
Tuvalu (succession)	–	16.X.1978	
United Arab Emirates (accession)	15.XII.1983	14.III.1984	24.V.2002
United Kingdom (ratification)	2.IV.1976	16.X.1978	15.V.1998
Vanuatu (accession)	13.I.1989	13.IV.1989	18.II.2000
Venezuela (accession)	21.I.1992	20.IV.1992	22.VII.1999
Yugoslavia (ratification)	16.III.1978	16.X.1978	

Number of Contracting States: 24

Upon the entry into force of the 2000 Protocol to the FUND 1971 Convention, the Convention ceased when the number of Contracting States fell below 25.

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[1] With a declaration, reservation or statement.

[2] Applies only to the Hong Kong Special Administrative Region.

[3] Accession by New Zealand was declared not to extend to Tokelau.

[4] As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.

Declarations, Reservations and Statements

Canada
The instrument of accession of Canada was accompanied by the following declaration (in the English and French languages):
"The Government of Canada assumes responsibility for the payment of the obligations contained in articles 10, 11 and 12 of the Fund Convention. Such payments to be made in accordance with section 774 of the Canada Shipping Act as amended by Chapter 7 of the Statutes of Canada 1987".

Federal Republic of Germany
The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the English language):
"that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany."

Syrian Arab Republic
The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):
[Translation]
"...the accession of the Syrian Arab Republic to this Convention ... in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention."

Protocol to the International Convention on the
Establishment of an International Fund for compensation for oil pollution damage

(FUND PROT 1976)

Done at London, 19 November 1976
Entered into force:
22 November 1994

Protocole à la Convention Internationale portant
Creation d'un Fonds International d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS PROT 1976)

Signé a Londres, le 19 novembre 1976
Entré en vigueur:
22 Novembre 1994

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Albania (accession)	6.IV.1994	22.XI.1994	
Australia (accession)	10.X.1994	8.I.1995	
Bahamas (acceptance)	3.III.1980	22.XI.1994	
Bahrain (accession)	3.V.1996	1.VIII.1996	
Barbados (accession)	6.V.1994	22.XI.1994	
Belgium (accession)	1.XII.1994	1.III.1995	
Canada (accession)	21.II.1995	22.V.1995	
China[3]	–	1.VII.1997	22.VIII.2003
Colombia (accession)	13.III.1997	11.VI.1997	25.I.2006
Cyprus (accession)	26.VII.1989	22.XI.1994	
Denmark (accession)	3.VI.1981	22.XI.1994	
Finland (accession)	8.I.1981	22.XI.1994	
France (accession)	7.XI.1980	22.XI.1994	
Germany (ratification)[1]	28.VIII.1980	22.XI.1994	
Greece (accession)	9.X.1995	7.I.1996	
Iceland (accession)	24.III.1994	22.XI.1994	
India (accession)	10.VII.1990	22.XI.1994	
Ireland (accession)	19.XI.1992	22.XI.1994	15.V.1998
Italy (accession)	21.IX.1983	22.XI.1994	
Japan (accession)	24.VIII.1994	22.XI.1994	
Liberia (accession)	17.II.1981	22.XI.1994	
Malta (accession)	27.IX.1991	22.XI.1994	6.I.2001
Marshall Islands (accession)	16.X.1995	14.I.1996	
Mauritius (accession)	6.IV.1995	5.VII.1995	
Mexico (accession)	13.V.1994	22.XI.1994	
Morocco (accession)	31.XII.1992	22.XI.1994	
Netherlands (accession)	1.XI.1982	22.XI.1994	
Norway (accession)	17.VII.1978	22.XI.1994	
Poland (accession)[1]	30.X.1985	22.XI.1994	
Portugal (accession)	11.IX.1985	22.XI.1994	

	Date of deposit of instrument	Date of entry into force	Effective date of denunciation
Russian Federation[2] (accession)	30.I.1989	22.XI.1994	
Spain (accession)	5.IV.1982	22.XI.1994	
Sweden (ratification)	7.VII.1978	22.XI.1994	
United Kingdom (ratification)	31.I.1980	22.XI.1994	15.V.1998
Vanuatu (accession)	13.I.1989	22.XI.1994	
Venezuela (accession)	21.I.1992	22.XI.1994	

Number of Contracting States: 31

[1] With a declaration or statement.

[2] As from 26.XII.1991 the membership of the USSR in the Protocol is continued by the Russian Federation.

[3] Applies only to the Hong Kong Special Administrative Region.

States which have denounced the Protocol

	Date of receipt of denunciation	Effective date of denunciation
China (in respect of HKAR)	22.VIII/2002	22.VIII.2003
Colombia	25.I.2005	25.I.2006
Ireland	15.V.1997	15.V.1998
Malta	6.I.2000	6.I.2001
United Kingdom	9.V.1997	15.V.1998

Declarations, Reservations and Statements

Federal Republic of Germany
The instrument of ratification of the Federal Republic of Germany contains the following declaration in the English language:
"... with effect from the date on which the Protocol enters into force for the Federal Republic of Germany, it shall also apply to Berlin (West)."

Poland
(for text of the notification, see page 458)

Protocol of 1992 to amend the International Convention on the
Establishment of an International Fund for compensation for oil pollution damage

(FUND PROT 1992)*

Done at London,
27 November 1992
Entry into force: 30 May 1996

Protocole de 1992 modifiant la Convention Internationale de 1971 portant
Creation d'un Fonds International d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS PROT 1992)

Signé a Londres,
le 27 novembre 1992
Entrée en vigueur: 30 may 1996

	Date of deposit of instrument	Date of entry into force
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)[1]	13.X.2000	13.X.2001
Australia (accession)	9.X.1995	9.X.1996
Bahamas (accession)	1.IV.1997	1.IV.1998
Bahrain (accession)	3.V.1996	3.V.1997
Barbados (accession)	7.VII.1998	7.VII.1999
Belgium (accession)	6.X.1998	6.X.1999
Belize (accession)	27.XI.1998	27.XI.1999
Brunei Darussalam (accession)	31.I.2002	31.I.2003
Bulgaria (accession)	18.XI.2005	18.XI.2006
Cambodia (accession)	8.VI.2001	8.VI.2002
Cameroon (accession)	15.X.2001	15.X.2002
Canada (accession)[1]	29.V.1998	29.V.1999
Cape Verde (accession)	4.VII.2003	4.VII.2004
China (accession)[2]	5.I.1999	5.I.2000
Colombia (accession)	19.XI.2001	19.XI.2002
Comoros (accession)	5.I.2000	5.I.2001
Congo (accession)	7.VIII.2002	7.VIII.2003
Croatia (accession)	12.I.1998	12.I.1999
Cyprus (accession)	12.V.1997	12.V.1998
Denmark (ratification)	30.V.1995	30.V.1996
Djibouti (accession)	8.I.2001	8.I.2002

* 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.

	Date of deposit of instrument	Date of entry into force
Dominica (accession)	31.VIII.2001	31.VIII.2002
Dominican Republic (accession)	24.VI.1999	24.VI.2000
Estonia (accession)	6.VIII.2004	6.VIII.2005
Fiji (accession)	30.XI.1999	30.XI.2000
Finland (acceptance)	24.XI.1995	24.XI.1996
France (approval)	29.IX.1994	30.V.1996
Gabon (accession)	31.V.2002	31.V.2003
Georgia (accession)	18.IV.2000	18.IV.2001
Germany (ratification)[1]	29.IX.1994	30.V.1996
Ghana (accession)	3.II.2003	3.II.2004
Greece (ratification)	9.X.1995	9.X.1996
Grenada (accession)	7.I.1998	7.I.1999
Guinea (accession)	2.X.2002	2.X.2003
Iceland (accession)	13.XI.1998	13.XI.1999
India (accession)	21.VI.2000	21.VI.2001
Ireland (accession)[1]	15.V.1997	16.V.1998
Israel (accession)	21.X.2004	21.X.2005
Italy (accession)	16.IX.1999	16.IX.2000
Jamaica (accession)	24.VI.1997	24.VI.1998
Japan (accession)	24.VIII.1994	30.V.1996
Kenya (accession)	2.II.2000	2.II.2001
Latvia (accession)	6.IV.1998	6.IV.1999
Liberia (accession)	5.X.1995	5.X.1996
Lithuania (accession)	27.VI.2000	27.VI.2001
Luxembourg (accession)	21.XI.2005	21.XI.2006
Madagascar (accession)	21.V.2002	21.V.2003
Malaysia (accession)	9.VI.2004	9.VI.2005
Maldives (accession)	20.V.2005	20.V.2006
Malta (accession)	6.I.2000	6.I.2001
Marshall Islands (accession)	16.X.1995	16.X.1996
Mauritius (accession)	6.XII.1999	6.XII.2000
Mexico (accession)	13.V.1994	30.V.1996
Monaco (ratification)	8.XI.1996	8.XI.1997
Morocco (ratification)	22.VIII.2000	22.VIII.2001
Mozambique (accession)	26.IV.2002	26.IV.2003
Namibia (accession)	18.XII.2002	18.XII.2003
Netherlands (accession)[4,5]	15.XI.1996	15.XI.1997
New Zealand (accession)[1]	25.VI.1998	25.VI.1999
Nigeria (accession)	24.V.2002	24.V.2003
Norway (ratification)	3.IV.1995	30.V.1996
Oman (accession)	8.VII.1994	30.V.1996
Panama (accession)	18.III.1999	18.III.2000
Papua New Guinea (accession)	23.I.2001	23.I.2002
Philippines (accession)	7.VII.1997	7.VII.1998
Poland (accession)	21.XII.1999	21.XII.2000
Portugal (accession)	13.XI.2001	13.XI.2002

	Date of deposit of instrument	Date of entry into force
Qatar (accession)	20.XI.2001	20.XI.2002
Republic of Korea (accession)[1]	7.III.1997	16.V.1998
Russian Federation (accession)	20.III.2000	20.III.2001
St. Kitts and Nevis (accession)	2.III.2005	2.III.2006
St. Lucia (accession)	20.V.2004	20.V.2005
Saint Vincent and the Grenadines (accession)	1.II.2002	1.II.2003
Samoa (accession)	9.X.2001	9.X.2002
Seychelles (accession)	23.VII.1999	23.VII.2000
Sierra Leone (accession)	4.VI.2001	4.VI.2002
Singapore (accession)	31.XII.1997	31.XII.1998
Slovenia (accession)	19.VII.2000	19.VII.2001
South Africa (accession)	1.X.2004	1.X.2005
Spain (accession)[1]	6.VII.1995	16.V.1998
Sri Lanka (accession)	22.I.1999	22.I.2000
Sweden (ratification)	25.V.1995	30.V.1996
Switzerland (accession)	10.X.2005	10.X.2006
Tonga (accession)	10.XII.1999	10.XII.2000
Trinidad and Tobago (accession)	6.III.2000	6.III.2001
Tunisia (accession)	29.I.1997	29.I.1998
Turkey (accession)[1]	17.VIII.2001	17.VIII.2002
Tuvalu (accession)	30.VI.2004	30.VI.2005
United Arab Emirates (accession)	19.XI.1997	19.XI.1998
United Kingdom (accession)[3]	29.IX.1994	30.V.1996
United Republic of Tanzania (accession)	19.XI.2002	19.XI.2003
Uruguay (accession)	9.VII.1997	9.VII.1998
Vanuatu (accession)	18.II.1999	18.II.2000
Venezuela (accession)	22.VII.1998	22.VII.1999

Number of Contracting States 98

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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)
Bailiwick of Guernsey)
Bermuda)
British Antarctic Territory)

British Indian Ocean Territory	)	with effect from 20.2.98
Pitcairn, Henderson, Ducie and Oeno Islands	)	
Sovereign Base Areas of Akrotiri and Dhekelia on Cyprus	)	
Turks & Caicos Islands	)	
Virgin Islands	)	
Cayman Islands	)	
Gibraltar	)	with effect from 15.5.98
St Helena and its Dependencies	)	

[4] Applies to Netherlands Antilles with effect from 21 December 2005.

[5] Applies to Aruba with effect from 12 April 2006.

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* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

Declarations, Reservations and Statements

Canada

The instrument of accession of Canada was accompanied by the following declaration:
"By virtue of Article 14 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, the Government of Canada assumes responsibility for the payment of the obligations contained in Article 10, paragraph 1."

Federal Republic of Germany

The instrument of ratification by Germany was accompanied by the following declaration:
"The Federal Republic of Germany hereby declares that, having deposited the instruments of ratification of the protocols of 27 November 1992 amending the International Convention on Civil Liability for Oil Pollution Damage of 1969 and amending the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage of 1971, it regards its ratification of the Protocols of 25 May 1984, as documented on 18 October 1988 by the deposit of its instruments of ratification, as null and void as from the entry into force of the Protocols of 27 November 1992."

New 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".

Protocol of 2003 to the
International Convention on the Establishment of an International Fund for compensation for oil pollution damage, 1992

(FUND PROT 2003)

Done at London,
16 may 2003
Entry into force: 3 March 2005

Protocole de 2003 à la
Convention internationale de 1992 portant création d'un fonds international d'indemnisation pour les dommages dus à la pollution par les hydrocarbures

(FONDS PROT 2003)

Signée a Londres
le 16 mai 2003
Entrée en vigueur: 3 Mars 2005

	Date of signature or deposit of of instrument	Date of entry into force
Barbados (accession)	6.XII.2005	6.III.2006
Belgium (accession)	4.XI.2005	4.II..2006
Croatia (accession)	17.II.2006	17.V.2006
Denmark (signature)[1]	24.II.2004	3.III.2005
Finland (accession)[2]	27.V.2004	3.III.2005
France (acceptance)	29.VI.2004	3.III.2005
Germany (accession)[2]	24.XI.2004	3.III.2005
Ireland (signature)	5.VII.2004	3.III.2005
Italy (accession)	20.X.2005	20.I.2006
Japan (accession)	13.VII.2004	3.III.2005
Latvia (accession)	18.IV.2006	18.VII.2006
Lithuania (accession)	22.XI.2005	22.II.2006
Netherlands (accession)	16.VI.2005	16.IX.2005
Norway (accession)	31.III.2004	3.III.2005
Portugal (accession)	15.II.2005	5.V.2005
Slovenia (accession)	3.III.2006	3.VI.2006
Spain (ratification)	3.XII.2004	3.III.2005
Sweden (accession)	5.V.2005	5.VIII.2005
United Kingdom (accession)	8.VI.2006	8.IX.2006

Number of Contracting States: 19

[1] Extended to Greenland (3 March 2005) and Faroe Islands (19 June 2006).

[2] With a declaration, reservation or statement.

Convention relating to Civil Liability in the Field of

Maritime Carriage of nuclear material (NUCLEAR 1971)

Done at Brussels,
17 December 1971
Entered into force: 15 July 1975

Convention relative 9 la Responsabilité Civile dans le Domaine du

Transport Maritime de matières nucléaires (NUCLEAR 1971)

Signée a Bruxelles,
le 17 décembre 1971
Entrée en vigueur: 15 juillet 1975

	Date of deposit of instrument	Date of entry into force
Argentina (accession)	18.V.1981	16.VIII.1981
Belgium (ratification)	15.VI.1989	13.IX.1989
Bulgaria (accession)	3.XII.2004	3.III.2005
Denmark (ratification)[1]	14.IX.1974	15.VII.1975
Dominica (accession)	31.VIII.2001	29.XI.2001
Finland (aceptance)	6.VI.1991	4.IX.1991
France (ratification)	2.II.1973	15.VII.1975
Gabon (accession)	21.I.1982	21.IV.1982
Germany* (ratification)	1.X.1975	30.XII.1975
Italy* (ratification)	21.VII.1980	19.X.1980
Latvia (accession)	25.I.2002	25.IV.2002
Liberia (accession)	17.II.1981	18.V.1981
Netherlands (accession)	l.VIII.1991	30.X.1991
Norway (ratification	16.IV.1975	15.VII.1975
Spain (accession)	21.V.1974	15.VII.1975
Sweden (ratification)	22.XI.1974	15.VII.1975
Yemen (accession)	6.III.1979	4.VI.1979

Number of Contracting States: 17

Declarations, Reservations and Statements

Federal Republic of Germany
The following reservation accompanies the signature of the Convention by the Representative of the Federal Republic of Germany (in the English language):
"Pursuant to article 10 of the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, the Federal Republic of Germany reserves the right to provide by national law, that the persons liable under an international convention or national law applicable in the field of maritime transport may continue to be liable in addition to the operator of a nuclear installation on condition that these persons are fully covered in respect of their liability, including defence against unjustified actions, by insurance or other financial security obtained by the operator."

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(1) Shall not apply to the Faroe Islands.

This reservation was withdrawn at the time of deposit of the instrument of ratification of the Convention.
The instrument of ratification of the Government of the Federal Republic of Germany was accompanied by the following declaration (in the German language):
[Translation]
"That the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.

Italy
The instrument of ratification of the Italian Republic was accompanied by the following statement (in the English language):
"It is understood that the ratification of the said Convention will not be interpreted in such a way as to deprive the Italian State of any right of recourse made according to the international law for the damages caused to the State itself or its citizens by a nuclear accident".

Athens Convention relating to the Carriage of passengers and their luggage by sea (PAL 1974)

Done at Athens:
13 December 1974
Entered into force:
28 April 1987

Convention d'Athènes relative au Transport par mer de passagers et de leurs bagages (PAL 1974)

Signée à Athènes,
le 13 décembre 1974
Entrée en vigueur:
28 avril 1987

	Date of deposit of instrument	Date of entry into force
Albania (accession)	16.III.2005	14.VI.2005
Argentina (accession)[1]	26.V.1983	28.IV.1987
Bahamas (accession)	7.VI.1983	28.IV.1987
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (accession)	15.VI.1989	13.IX.1989
China[5] **(accession)**	1.VI.1994	30.VIII.1994
Croatia (accession)	12.I.1998	12.IV.1998
Dominica (accession)	31.VIII.2001	29.XI.2001
Egypt (accession)	18.X.1991	16.I.1992
Equatorial Guinea (accession)	24.IV.1996	23.VII.1996
Estonia (accession)	8.X.2002	6.I.2003
Georgia (accession)	25.VIII.1995	23.XI.1995
Greece (acceptance)	3.VII.1991	1.X.1991
Guyana (accession)	10.XII.1997	10.III.1998
Ireland (accession)	24.II.1998	25.V.1998
Jordan (accession)	3.X.1995	1.I.1996
Latvia (accession)	6.XII.2001	6.III.2002
Liberia (accession)	17.II.1981	28.IV.1987

	Date of deposit of instrument	Date of entry into force
Luxembourg (accession)	14.II.1991	15.V.1991
Malawi (accession)	9.III.1993	7.VI.1993
Marshall Islands (accession)	29.XI.1994	27.II.1995
Nigeria (accession)	24.II.2004	24.V.2004
Poland (ratification)	28.I.1987	28.IV.1987
Russian Federation[2] **(accession)**[1]	27.IV.1983	28.IV.1987
Spain (accession)	8.X.1981	28.IV.1987
St. Kitts and Nevis (accession)	30.VIII.2005	28.XI.2005
Switzerland (ratification)	15.XII.1987	14.III.1988
Tonga (accession)	15.II.1977	28.IV.1987
Ukraine (accession)	11.XI.1994	9.II.1995
United Kingdom (ratification)[3]	31.I.1980	28.IV.1987
Vanuatu (accession)	13.I.1989	13.IV.1989
Yemen (accession)	6.III.1979	28.IV.1987

Number of Contracting States: 32[4]

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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

[4] On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded to the Convention on 29.VIII.1979.

[5] Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

[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 [1]
The instrument of accession of the Argentine Republic contained a declaration of non-application of the Convention under article 22, paragraph 1, as follows (in the Spanish language):
[Translation]
"The Argentine Republic will not apply the Convention when both the passengers and the carrier are Argentine nationals".
The instrument also contained the following reservations:
[Translation]
"The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and Their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and Their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of "Falkland Islands", and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory".

German Democratic Republic
The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):
[Translation]
"The German Democratic Republic declares that the provisions of this Convention shall have no effect when the passenger is a national of the German Democratic Republic and when the performing carrier is a permanent resident of the German Democratic Republic or has its seat there".

USSR
The instrument of accession of the Union of Soviet Socialist Republic contained a declaration of non-application of the Convention under article 22, paragraph 1.

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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

	Date of deposit of instrument	Date of entry into force
Albania (accession)	16.III.2005	14.VI.2005
Argentina (accession)[1]	28.IV.1987	30.IV.1989
Bahamas (accession)	28.IV.1987	30.IV.1989
Barbados (accession)	6.V.1994	4.VIII.1994
Belgium (accession)	15.VI.1989	13.IX.1989
China[5,6] **(accession)**	1.VI.1994	30.VIII.1994
Croatia (accession)	12.I.1998	12.IV.1998
Dominica (accession)	31.VIII.2001	29.XI.2001
Estonia (accession)	8.X.2002	6.I.2003
Georgia (accession)	25.VIII.1995	23.XI.1995
Greece (accession)	3.VII.1991	1.X.1991
Ireland (accession)	24.II.1998	25.V.1998
Latvia (accession)	6.XII.2001	6.III.2002
Liberia (accession)	28.IV.1987	30.IV.1989
Luxembourg (accession)	14.II.1991	15.V.1991
Marshall Islands (accession)	29.XI.1994	27.II.1995
Poland (accession)	28.IV.1987	30.IV.1989
Russian Federation[2] **(accession)**[3]	30.I.1989	30.IV.1989
Spain (accession)	28.IV.1987	30.IV.1989
Switzerland (accession)[3]	15.XII.1987	30.IV.1989
Tonga (accession)	18.IX.2003	17.XII.2003
Ukraine (accession)	11.XI.1994	9.II.1995
United Kingdom (ratification)[3, 4]	28.IV.1987	30.IV.1989
Vanuatu (accession)	13.I.1989	30.IV.1989
Yemen (accession)	28.IV.1987	30.IV.1989

Number of Contracting States: 25

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[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.

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* With a reservation made by the Argentine Republic and a communication received from the United Kingdom.

** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Argentina [(1)]
The instrument of accession of the Argentine Republic contained the following reservation (in the Spanish language):
[Translation]
"The Argentine Republic rejects the extension of the application of the Athens Convention relating to Carriage of Passengers and their Luggage by Sea, 1974, adopted in Athens, Greece, on 13 December 1974, and of the Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, approved in London on 19 December 1976, to the Malvinas Islands as notified by the United Kingdom of Great Britain and Northern Ireland to the Secretary-General of the International Maritime Organization (IMO) in ratifying the said instrument on 31 January 1980 under the incorrect designation of "Falkland Islands", and reaffirms its sovereign rights over the said Islands which form an integral part of its national territory".

[(1)] The depositary received the following communication dated 4 August 1987 from the United Kingdom Foreign and Commonwealth Office:

"The Government of the United Kingdom of Great Britain and Northern Ireland cannot accept the reservation made by the Argentine Republic as regards the Falkland Islands.

The Government of the United Kingdom of Great Britain and Northern Ireland have no doubt as to the United Kingdom sovereignty over the Falkland Islands and, accordingly, their right to extend the application of the Convention to the Falkland Islands".

Protocol of 1990 to amend the
1974 Athens Convention relating to the Carriage of passengers and their luggage by sea
(PAL PROT 1990)

Done at London, 29 March 1990
Not yet in force

Protocole de 1990 modifiant
La Convention d'Athènes de 1974 relative au Transport par mer de passagers et de leurs bagages
(PAL PROT 1990)

Fait à Londres, le 29 mars 1990
Pas encore en vigueur

	Date of deposit of instrument
Albania (accession)	16.III.2005
Croatia (accession)	12.I.1998
Egypt (accession)	18.X.1991
Luxembourg (accession)	21.XI.2005
Spain (accession)	24.II.1993
Tonga (accession)	18.IX.2003

Number of Contracting States: 6

Protocol of 2002
to the Athens Convention relating to the carriage of passengers and their luggage by sea, 1974

Done at London, 1 November 2002
Not yet in force

Protocole de 2002
à la Convention d'Athènes relative au Transport par mer de passagers et de leurs bagages, 1974

Fait à Londres, le 1 Novembre 2002
Pas encore en vigueur

Status as 30 June 2006

	Date of signature or deposit of instrument
Albania (accession)	16.III.2005
Latvia (accession)	17.II.2005
St. Kitts and Nevis (accession)	30.VIII.2005
Syrian Arab Republic (accession)	10.III.2005

Number of Contracting States: 4

Convention on
Limitation of Liability for maritime claims
(LLMC 1976)

Done at London, 19 November 1976
Entered into force: 1 December 1986

Convention sur la
Limitation de la Responsabilité en matière de créances maritimes
(LLMC 1976)

Signée à Londres, le 19 novembre 1976
Entrée en vigueur: 1 décembre 1986

	Date of deposit of instrument	Date of entry into force
Albania (accession)	7.VI.2004	1.X.2004
Algeria (accession)	4.VIII.2004	1.XII.2004
Australia (accession)	20.II.1991	1.VI.1991
Azerbaijan (accession)	16.VII.2004	1.XI.2004
Bahamas (accession)	7.VI.1983	1.XII.1986
Barbados (accession)	6.V.1994	1.IX.1994
Belgium (accession)[1, 2]	15.VI.1989	1.X.1989
Benin (accession)	1.XI.1985	1.XII.1986
Bulgaria (accession)	4.VII.2005	1.XI.2005
China[9]	–	1.VII.1997
Congo (accession)	7.IX.2004	3.II.2004
Croatia (accession)	2.III.1993	1.VI.1993
Cyprus (accession)	23.XII.2005	1.IV.2006
Denmark (ratification)	30.V.1984	1.XII.1986
Dominica (accession)	31.VIII.2001	1.XII.2001
Egypt (accession)	30.III.1988	1.VII.1988
Equatorial Guinea (accession)	24.IV.1996	1.VIII.1996
Estonia (accession)	23.X.2002	1.II.2003
Finland (ratification)	8.V.1984	1.XII.1986
France (approval)[1, 2]	1.VII.1981	1.XII.1986
Georgia (accession)	20.II.1996	1.VI.1996
Germany[3] **(ratification)**[1, 2]	12.V.1987	1.IX.1987
Greece (accession)	3.VII.1991	1.XI.1991
Guyana (accession)	10.XII.1997	1.IV.1998
India (accession)	20.VIII.2002	1.XII.2002
Ireland (accession)[1]	24.II.1998	1.VI.1998
Jamaica (accession)	17.VIII.2005	1.XII.2006
Japan (accession)[1]	4.VI.1982	1.XII.1986
Latvia (accession)	13.VII.1999	1.XI.1999
Liberia (accession)	17.II.1981	1.XII.1986
Lithuania (accession)	3.III.2004	1.VII.2004
Luxembourg (accession)	21.XI.2005	1.III.2006
Marshall Islands (accession)	29.XI.1994	1.III.1995
Mauritius (accession)	17.XII.2002	1.VI.2003
Mexico (accession)	13.V.1994	1.IX.1994
Netherlands (accession)[1, 2]	15.V.1990	1.IX.1990
New Zealand (accession)[5]	14.II.1994	1.VI.1994
Nigeria (accession)	24.II.2004	1.VI.2004

	Date of deposit of instrument	Date of entry into force
Norway (ratification)[4]	30.III.1984	1.XII.1986
Poland (accession)[6]	28.IV.1986	1.XII.1986
Samoa (accession)	18.V.2004	1.IX.2004
Sierra Leone (accession)	26.VII.2001	1.XI.2001
Singapore (accession)	24.I.2005	1.V.2005
Spain (ratification)	13.XI.1981	1.XII.1986
St. Lucia (accession)	20.V.2004	1.IX.2004
Syrian Arab Republic (accession)	21.IX.2005	1.I.2006
Sweden (ratification)[4]	30.III.1984	1.XII.1986
Switzerland (accession)[2, 6]	15.XII.1987	1.IV.1988
Tonga (accession)	18.IX.2003	1.I.2004
Trinidad and Tobago (accession)	6.III.2000	1.VII.2000
Turkey (accession)	6.III.1998	1.VII.1998
United Arab Emirates (accession)	19.XI.1997	1.III.1998
United Kingdom (ratification)[1, 7, 8]	31.I.1980	1.XII.1986
Vanuatu (accession)	14.IX.1992	1.I.1993
Yemen (accession)	6.III.1979	1.XII.1986

Number of Contracting States: 50
The Convention applies provisionally in respect of: Belize

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[1] With a declaration, reservation or statement.
[2] With a notification under article 15(2).
[3] On 3.X.1990 the German Democratic Republic acceded to the Federal Republic of Germany. The German Democratic Republic had acceded1, 6 to the Convention on 17.II.1989.
[4] With a notification under article 15(4).
[5] The instrument of accession contained the following statement:
"AND WHEREAS it is not intended that the accession by the Government of New Zealand to the Convention should extend to Tokelau;".
[6] With a notification under article 8(4).
[7] The United Kingdom declared its ratification to be effective also in respect of:

Bailiwick of Jersey		
Bailiwick of Guernsey		
Isle of Man		
Belize*		
Bermuda		
British Virgin Islands		
Cayman Islands		
Falkland Islands**		
Gibraltar		
Hong Kong***		
Montserrat		
Pitcairn		
Saint Helena and Dependencies		
Turks and Caicos Islands		
United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in the Island of Cyprus		
Anguilla	)	
British Antarctic Territory	)	notification received
British Indian Ocean Territory	)	4.II.1999
South Georgia and the South Sandwich Islands	)	

[8] With notifications under articles 8(4) and 15(2).
[9] Applies only to the Hong Kong Special Administrative Region.

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* Has since become the independent State of Belize to which the Convention applies provisionally.

** A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

*** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Belgium
The instrument of accession of the Kingdom of Belgium was accompanied by the following reservation (in the French language):
[Translation]
"In accordance with the provisions of article 18, paragraph 1, Belgium expresses a reservation on article 2, paragraph 1(d) and (e)".

China
By notification dated 5 June 1997 from the People's Republic of China:
[Translation]
"1. with respect to the Hong Kong Special Administrative Region, it reserves the right in accordance with Article 18 (1), to exclude the application of the Article 2 (1)(d)".

France
The instrument of approval of the French Republic contained the following reservation (in the French language):
[Translation]
"In accordance with article 18, paragraph 1, the Government of the French Republic reserves the right to exclude the application of article 2, paragraphs 1(d) and (e)".

German Democratic Republic
The instrument of accession of the German Democratic Republic was accompanied by the following reservation (in the German language):
[Translation]
Article 2, paragraph 1(d) and (e)
"The German Democratic Republic notes that for the purpose of this Convention there is no limitation of liability within its territorial sea and internal waters in respect of the removal of a wrecked ship, the raising, removal or destruction of a ship which is sunk, stranded or abandoned (including anything that is or has been on board such ship). Claims, including liability, derive from the laws and regulations of the German Democratic Republic."
Article 8, paragraph 1
"The German Democratic Republic accepts the use of the Special Drawing Rights merely as a technical unit of account. This does not imply any change in its position toward the International Monetary Fund".

Federal Republic of Germany
The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the German language):
[Translation]
"...that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany".

"In accordance with art. 18, par. 1 of the Convention, the Federal Republic of Germany reserves the right to exclude the application of art. 2, par. 1(d) and (e) of the Convention"

Japan
The instrument of accession of Japan was accompanied by the following statement (in the English language):
"...the Government of Japan, in accordance with the provision of paragraph 1 of article 18 of the Convention, reserves the right to exclude the application of paragraph 1(d) and (e) of article 2 of the Convention".

Netherlands
The instrument of accession of the Kingdom of the Netherlands contained the following reservation:
"In accordance with article 18, paragraph 1 of the Convention on limitation of liability for maritime claims, 1976, done at London on 19 November 1976, the Kingdom of the Netherlands reserves the right to exclude the application of article 2, paragraph 1(d) and (e) of the Convention".

United Kingdom
The instrument of accession of the United Kingdom of Great Britain and Northern Ireland contained reservation which states that the United Kingdom was "Reserving the right, in accordance with article 18, paragraph 1, of the Convention, on its own behalf and on behalf of the above mentioned territories, to exclude the application of article 2, paragraph 1(d); and to exclude the application of article 2, paragraph 1(e) with regard to Gibraltar only".

Notifications

Article 8(4)

German Democratic Republic
[Translation]
"The amounts expressed in Special Drawing Rights will be converted into marks of the German Democratic Republic at the exchange rate fixed by the Staatsbank of the German Democratic Republic on the basis of the current rate of the US dollar or of any other freely convertible currency".

China
[Translation]
"The manner of calculation employed with respect to article 8(1) of the Convention concerning the unit of account shall be the method of valuation applied by the International Monetary Fund;"

Poland
"Poland will now calculate financial liabilities mentioned in the Convention in the terms of the Special Drawing Right, according to the following method.
The Polish National Bank will fix a rate of exchange of the SDR to the United States dollar according to the current rates of exchange quoted by Reuter. Next, the US dollar will be converted into Polish zloties at the rate of exchange quoted by the Polish National Bank from their current table of rates of foreign currencies".

Switzerland
"The Federal Council declares, with reference to article 8, paragraphs 1 and 4 of the Convention that Switzerland calculates the value of its national currency in special drawing rights (SDR) in the following way:

The Swiss National Bank (SNB) notifies the International Monetary Fund (IMF) daily of the mean rate of the dollar of the United States of America on the Zurich currency market. The exchange value of one SDR in Swiss francs is determined from that dollar rate and the rate of the SDR in dollars calculated by IMF. On the basis of these values, SNB calculates a mean SDR rate which it will publish in its Monthly Gazette".

United Kingdom
"...The manner of calculation employed by the United Kingdom pursuant to article 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."

Paragraph 2(b)

The Act of June 14th 1989 (Staatsblad 241) relating to the limitation of liability for maritime claims provides that with respect to ships which are according to their construction intended exclusively or mainly for the carriage of persons and have a tonnage of less than 300, the limit of liability for claims other than for loss of life or

personal injury may be established by Order in Council at a lower level than under the Convention.
The Order in Council of February 19th 1990 (Staatsblad 97) provides that the limit shall be 100,000 Units of Account.
The Unit of Account is the Special Drawing Right as defined in Article 8 of the Convention on Limitation of Liability for Maritime Claims, 1976."

Switzerland
[Translation]
"In accordance with article 15, paragraph 2, of the Convention on Limitation of Liability for Maritime Claims, 1976, we have the honour to inform you that Switzerland has availed itself of the option provided in paragraph 2(a) of the above mentioned article.
Since the entry into force of article 44a of the Maritime Navigation Order of 20 November 1956, the limitation of the liability of the owner of an inland waterways ship has been determined in Switzerland in accordance with the provisions of that article, a copy of which is [reproduced below]:
II. Limitation of liability of the owner of an inland waterways vessel
Article 44a
1. In compliance with article 5, subparagraph 3c, of the law on maritime navigation, the liability of the owner of an inland waterways vessel, provided in article 126, subparagraph 2c, of the law, shall be limited as follows:
a. in respect of claims for loss of life or personal injury, to an amount of 200 units of account per deadweight tonne of a vessel used for the carriage of goods and per cubic metre of water displaced for any other vessel, increased by 700 units of account per kilowatt of power in the case of mechanical means of propulsion, and to an amount of 700 units of account per kilowatt of power for uncoupled tugs and pusher craft; for all such vessels, however, the limit of liability is fixed at a minimum of 200,000 units of account;
b. in respect of claims for passengers, to the amounts provided by the Convention on Limitation of Liability for Maritime Claims, 1976, to which article 49, subparagraph 1, of the federal law on maritime navigation refers;
c. in respect of any other claims, half of the amounts provided under subparagraph a.
2. The unit of account shall be the special drawing right defined by the International Monetary Fund.
3. Where, at the time when damage was caused, a pusher craft was securely coupled to a pushed barge train, or where a vessel with mechanical means of propulsion was providing propulsion for other vessels coupled to it, the maximum amount of the liability, for the entire coupled train, shall be determined on the basis of the amount of the liability of the pusher craft or of the vessel with mechanical means of propulsion and also on the basis of the amount calculated for the deadweight tonnage or the water displacement of the vessels to which such pusher craft or vessel is coupled, in so far as it is not proved that such pusher craft or such vessel has rendered salvage services to the coupled vessels."

United Kingdom
"...With regard to article 15, paragraph 2(b), the limits of liability which the United Kingdom intend to apply to ships of under 300 tons are 166,677 units of account in respect of claims for loss of life or personal injury, and 83,333 units of account in respect of any other claims."

Article 15(4)

Norway
"Because a higher liability is established for Norwegian drilling vessels according to the Act of 27 May 1983 (No. 30) on changes in the Maritime Act of 20 July 1893,

paragraph 324, such drilling vessels are exempted from the regulations of this Convention as specified in article 15 No. 4."

Sweden
"...In accordance with paragraph 4 of article 15 of the Convention, Sweden has established under its national legislation a higher limit of liability for ships constructed for or adapted to and engaged in drilling than that otherwise provided for in article 6 of the Convention.

Protocol of 1996 to amend the convention on Limitation of Liability for maritime claims, 1976

(LLMC PROT 1996)

Done at London, 2 May 1996
Entered into force: 13 May 2004

Protocole de 1996 modifiant la convention de 1976 sur la Limitation de la Responsabilité en matière de créances maritimes

(LLMC PROT 1996)

Signée à Londre le 2 mai 1996
Entrée en vigueur: 13 mai 2004

	Date of deposit of instrument	Date of entry into force
Albania (accession)	7.VI.2004	5.IX.2004
Australia (accession)	8.X.2002	13.V.2004
Bulgaria (accession)	4.VIII.2005	2.X.2005
Croatia (accession)	15.V.2006	
Cyprus (accession)	23.XII.2005	23.III.2006
Denmark (ratification)	12.IV.2002	13.V.2004
Finland (acceptance)	15.IX.2000	13.V.2004
Germany (ratification)	3.IX.2001	13.V.2004
Jamaica (accession)	19.VIII.2005	17.XII.2005
Japan (accession)	3.V.2006	1.VIII.2006
Luxembourg (accession)	21.XI.2005	19.I.2006
Malta (accession)[1]	13.II.2004	13.V.2004
Marshall Island (accession)	30.I.2006	30.IV.2006
Norway (ratification)[1]	17.X.2000	13.V.2004
Russian Federation (accession)[1]	25.V.1999	13.V.2004
Samoa (accession)	18.V.2004	16.VIII.2004
Sierra Leone (accession)		1.XI.2001
Spain (accession)[1]	10.I.2005	10.IV.2005
St. Lucia (accession)	20.V.2004	18.VIII.2004
Sweden (accession)	22.VII.2004	20.X.2004
Syrian Arab Republic (accession)	2.IX.2005	1.XII.2005
Tonga (accession)	18.IX.2003	13.V.2004
United Kingdom (ratification)[1]	11.VI.1999	13.V.2004

Number of Contracting States: 23

[1] With a reservation or statement

International Convention on
Salvage, 1989
(SALVAGE 1989)

Done at London: 28 April 1989
Entered into force: 14 July 1996

Convention Internationale de
1989 sur l'Assistance
(ASSISTANCE 1989)

Signée a Londres le 28 avril 1989
Entrée en vigueur: 14 juillet 1996

	Date of deposit of instrument	Date of entry into force
Albania (accession)	14.VI.2006	14.VII.2007
Australia (accession)[1]	8.I.1997	8.I.1998
Azerbaijan (accession)	12.VI.2006	12.VI.2007
Belgium (accession)	30.VI.2004	30.VI.2005
Bulgaria (accession)	14.III.2005	14.III.2006
Canada (ratification)[1]	14.XI.1994	14.VII.1996
China[4,5] **(accession)**[1]	30.III.1994	14.VII.1996
Congo (accession)	7.IX.2004	7.IX.2005
Croatia (accession)[1]	10.IX.1998	10.IX.1999
Denmark (ratification)	30.V.1995	14.VII.1996
Dominica (accession)	31.VIII.2001	31.VIII.2002
Ecuador (accession)	16.III.2005	16.III.2006
Egypt (accession)	14.III.1991	14.VII.1996
Estonia (accession)[1]	31.VII.2001	31.VII.2002
France (accession)	20.XII.2001	20.XII.2002
Georgia (accession)	25.VIII.1995	25.VIII.1996
Germany (ratification)[1]	8.X.2001	8.X.2002
Greece (accession)	3.VI.1996	3.VI.1997
Guinea (accession)	2.X.2002	2.X.2003
Guyana (accession)	10.XII.1997	10.XII.1998
Iceland (accession)	21.III.2002	21.III.2003
India (accession)	18.X.1995	18.X.1996
Iran (Islamic Republic of) (accession)[1]	1.VIII.1994	14.VII.1996
Ireland (ratification)[1]	6.I.1995	14.VII.1996
Italy (ratification)	14.VII.1995	14.VII.1996
Jordan (accession)	3.X.1995	3.X.1996
Kenya (accession)	21.VII.1999	21.VII.2000
Latvia (accession)	17.III.1999	17.III.2000
Lithuania (accession)[1]	15.XI.1999	15.XI.2000
Marshall Islands (accession)	16.X.1995	16.X.1996
Mauritius (accession)	17.XII.2002	17.XII.2003
Mexico (ratification)[1]	10.X.1991	14.VII.1996
Netherlands (acceptance)[1, 2]	10.XII.1997	10.XII.1998
New Zealand (accession)	16.X.2002	16.X.2003
Nigeria (ratification)	11.X.1990	14.VII.1996
Norway (ratification)[1]	3.XII.1996	3.XII.1997
Oman (accession)	14.X.1991	14.VII.1996
Poland (ratification)	16.XII.2005	16.XII.2006
Romania (accession)	18.V.2001	18.V.2002
Russian Federation (ratification)[1]	25.V.1999	25.V.2000

	Date of deposit of instrument	Date of entry into force
Saudi Arabia (accession)[1]	16.XII.1991	14.VII.1996
Sierra Leone (accession)	26.VII.2001	26.VII.2002
Slovenia (accession)	23.XII.2005	23.XII.2006
St. Kitts and Nevis (accession)	7.X.2004	7.X.2005
Sweden (ratification)[1]	19.XII.1995	19.XII.1996
Switzerland (ratification)	12.III.1993	14.VII.1996
Syrian Arab Republic (accession)[1]	19.III.2002	19.III.2003
Tonga (accession)	18.IX.2003	18.IX.2004
Tunisia (accession)[1]	5.V.1999	5.V.2000
United Arab Emirates (accession)	4.X.1993	14.VII.1996
United Kingdom (ratification)[1, 3]	29.IX.1994	14.VII.1996
United States (ratification)	27.III.1992	14.VII.1996
Vanuatu (accession)	18.II.1999	18.II.2000

Number of Contracting States: 54

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[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.

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* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1.VII.1997.

Declarations, Reservations and Statements

Canada
The instrument of ratification of Canada was accompanied by the following reservation:
"Pursuant to Article 30 of the International Convention on Salvage, 1989, the Government of Canada reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

China
The instrument of accession of the People's Republic of China contained the following statement:
[Translation]
"That in accordance with the provisions of article 30, paragraph 1 of the International Convention on Salvage, 1989, the Government of the People's Republic of China reserves the right not to apply the provisions of article 30, paragraphs 1(a), (b) and (d) of the said Convention".

Islamic Republic of Iran
The instrument of accession of the Islamic Republic of Iran contained the following reservation:
"The Government of the Islamic Republic of Iran reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b), (c) and (d)".

Ireland
The instrument of ratification of Ireland contained the following reservation:
"Reserve the right of Ireland not to apply the provisions of the Convention specified in article 30(1)(a) and (b) thereof".

Mexico
The instrument of ratification of Mexico contained the following reservation and declaration:
[Translation]
"The Government of Mexico reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b) (c) and (d), pointing out at the same time that it considers salvage as a voluntary act ".

Norway
The instrument of ratification of the Kingdom of Norway contained the following reservation:
"In accordance with Article 30, subparagraph 1(d) of the Convention, the Kingdom of Norway reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

Saudi Arabia [(1)]
The instrument of accession of Saudi Arabia contained the following reservations:
[Translation]

[(1)] The depositary received the following communication dated 27 February 1992 from the Embassy of Israel:

"1. This instrument of accession does not in any way whatsoever mean the recognition of Israel; and

2. The Kingdom of Saudi Arabia reserves its right not to implement the rules of this instrument of accession to the situations indicated in paragraphs (a), (b), (c) and (d) of article 30 of this instrument."

Spain

The following reservations were made at the time of signature of the Convention:
[Translation]
"In accordance with the provisions of article 30.1(a), 30.1(b) and 30.1(d) of the International Convention on Salvage, 1989, the Kingdom of Spain reserves the right not to apply the provisions of the said Convention:

– when the salvage operation takes place in inland waters and all vessels involved are of inland navigation;
– when the salvage operations take place in inland waters and no vessel is involved.

For the sole purposes of these reservations, the Kingdom of Spain understands by 'inland waters' not the waters envisaged and regulated under the name of 'internal waters' in the United Nations Convention on the Law of the Sea but continental waters that are not in communication with the waters of the sea and are not used by seagoing vessels. In particular, the waters of ports, rivers, estuaries, etc., which are frequented by seagoing vessels are not considered as 'inland waters':

– when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed".

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".

"The Government of the State of Israel has noted that the instrument of accession of Saudi Arabia to the above-mentioned Convention contains a declaration with respect to Israel.

In the view of the Government of the State of Israel such declaration, which is explicitly of a political character, is incompatible with the purposes and objectives of this Convention and cannot in any way affect whatever obligations are binding upon Saudi Arabia under general International Law or under particular Conventions.

The Government of the State of Israel will, in so far as concerns the substance of the matter, adopt towards Saudi Arabia an attitude of complete reciprocity."

International Convention on
Oil pollution preparedness, response and co-operation 1990

Done at London: 30 November 1990
Entered into force 13 May 1995.

Convention Internationale de
1990 sur la Preparation, la lutte et la cooperation en matière de pollution par les hydrocarbures

Signée a Londres le 30 novembre 1990
Entrée en vigueur: 13 Mai 1995.

Status as 30 June 2006

	Date of deposit of instrument	Date of entry into force
Algeria (accession)	8.III.2005	8.VI.2005
Angola (accession)	4.X.2001	4.I.2002
Antigua and Barbuda (accession)	5.I.1999	5.IV.1999
Argentina (ratification)[1]	13.VII.1994	13.V.1995
Australia (accession)	6.VII.1992	13.V.1995
Azerbaijan (accession)	16.VII.2004	16.X.2004
Bahamas (accession)	4.X.2001	4.I.2002
Bangladesh (accession)	23.VII.2004	23.X.2004
Brazil (ratification)	21.VII.1998	21.X.1998
Bulgaria (accession)	5.IV.2001	5.VII.2001
Canada (accession)	7.III.1994	13.V.1995
Cape Verde (accession)	4.VII.2003	4.X.2003
Chile (accession)	15.X.1997	15.I.1998
China (accession)	30.III.1998	30.VI.1998
Comoros (accession)	5.I.2000	5.IV.2000
Congo (accession)	7.IX.2004	7.XII.2004
Croatia (accession)	12.I.1998	12.IV.1998
Denmark (ratification)	22.X.1996	22.I.1997
Djibouti (accession)	19.I.1998	19.IV.1998
Dominica (accession)	31.VIII.2001	30.XI.2001
Ecuador (ratification)	29.I.2002	29.IV.2002
Egypt (ratification)	29.VI.1992	13.V.1995
El Salvador (accession)	9.X.1995	9.I.1996
Finland (approval)	21.VII.1993	13.V.1995
France (approval)	6.XI.1992	13.V.1995
Gabon (accession)	12.IV.2005	12.VII.2005
Georgia (accession)	20.II.1996	20.V.1996
Germany (ratification)	15.II.1995	15.V.1995
Greece (ratification)	7.III.1995	7.VI.1995
Guinea (accession)	2.X.2002	2.I.2003
Guyana (accession)	10.XII.1997	10.III.1998

[1] With a reservation.

	Date of deposit of instrument	Date of entry into force
Iceland (ratification)	21.VI.1993	13.V.1995
India (accession)	17.XI.1997	17.II.1998
Iran (Islamic Republic of)(accession)	25.II.1998	25.V.1998
Ireland (accession)	26.IV.2001	26.VII.2001
Israel (ratification)	24.III.1999	24.VI.1999
Italy (ratification)	2.III.1999	2.VI.1999
Jamaica (accession)	8.IX.2000	8.XII.2000
Japan (accession)	17.X.1995	17.I.1996
Jordan (accession)	14.IV.2004	14.VII.2004
Kenya (accession)	21.VII.1999	21.X.1999
Latvia (accession)	30.XI.2001	28.II.2002
Lebanon (ratification)	30.III.2005	30.VI.2005
Liberia (accession)	5.X.1995	5.I.1996
Libyan Arab Jamahiriya (accession)	18.VI.2004	18.IX.2004
Lithuania (accession)	23.XII.2002	23.III.2003
Madagascar (accession)	21.V.2002	21.VIII.2002
Malaysia (accession)	30.VII.1997	30.X.1997
Malta (accession)	21.I.2003	21.IV.2003
Marshall Islands (accession)	16.X.1995	16.I.1996
Mauritania (accession)	22.XI.1999	22.II.2000
Mauritius (accession)	2.XII.1999	2.III.2000
Mexico (accession)	13.V.1994	13.V.1995
Monaco (accession)	19.X.1999	19.I.2000
Morocco (ratification)	29.IV.2003	29.VII.2003
Mozambique (accession)	9.XI.2005	10.II.2006
Netherlands (ratification)	1.XII.1994	13.V.1995
New Zealand (accession)	2.VII.1999	2.X.1999
Nigeria (accession)	25.V.1993	13.V.1995
Norway (ratification)	8.III.1994	13.V.1995
Pakistan (accession)	21.VII.1993	13.V.1995
Peru (accession)	24.IV.2002	24.VII.2002
Poland (ratification)	12.VI.2003	12.IX.2003
Republic of Korea (accession)	9.XI.1999	9.II.2000
Romania (accession)	17.XI.2000	17.II.2001
Samoa (accession)	18.V.2004	18.VIII.2004
Senegal (ratification)	24.III.1994	13.V.1995
Seychelles (accession)	26.VI.1992	13.V.1995
Singapore (accession)	10.III.1999	10.VI.1999
Slovenia (accession)	31.V.2001	31.VIII.2001
St. Kitts and Nevis (accession)	7.X.2004	7.I.2004
St. Lucia (accession)	20.V.2004	20.VIII.2004
Spain (ratification)	12.I.1994	13.V.1995
Sweden (ratification)	30.III.1992	13.V.1995
Switzerland (accession)	4.VII.1996	4.X.1996
Syrian Arab Republic (accession)	14.III.2003	14.VI.2003
Thailand (accession)	20.IV.2000	20.VII.2000
Tonga (accession)	1.II.1996	1.V.1996
Trinidad and Tobago (accession)	6.III.2000	6.VI.2000

	Date of deposit of instrument	Date of entry into force
Tunisia (accession)	23.X.1995	23.I.1996
Turkey (accession)	1.VII.2004	1.X.2004
United Kingdom (accession)	16.IX.1997	16.XII.1997
United Republic of Tanzania (accession)	16.V.2006	16.VIII.2006
United States (ratification)	27.III.1992	13.V.1995
Uruguay (signature by confirmation)	27.IX.1994	13.V.1995
Vanuatu (accession)	18.II.1999	18.V.1999
Venezuela (ratification)	12.XII.1994	13.V.1995

Number of Contracting States: 88

Declarations, Reservations and Statements

Argentina [1]
The instrument of ratification of the Argentine Republic contained the following reservation:
[Translation]
"The Argentine Republic hereby expressly reserves its rights of sovereignty and of territorial and maritime jurisdiction over the Malvinas Islands, South Georgia and South Sandwich Islands, and the maritime areas corresponding thereto, as recognized and defined in Law No. 23.968 of the Argentine Nation of 14 August 1991, and repudiates any extension of the scope of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990, which may be made by any other State, community or entity to those Argentine island territories and/or maritime areas".

Denmark
The instrument of ratification of the Kingdom of Denmark contained the following reservation:
[Translation]
"That the Convention will not apply to the Faroe Islands nor to Greenland, pending a further decision".
By a communication dated 27 November 1996 the depositary was informed that Denmark withdraws the reservation with respect to the territory of Greenland.

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[1] The depositary received, on 22 February 1996, the following communication from the Foreign and Commonwealth Office of the United Kingdom:

"The Government of the United Kingdom of Great Britain and Northern Ireland have noted the declaration of the Government of Argentina concerning rights of sovereignty and of territorial and maritime jurisdiction over the Falkland Islands and South Georgia and the South Sandwich Islands.

The British Government have no doubt about the sovereignty of the United Kingdom over the Falkland Islands, as well as South Georgia and the South Sandwich Islands. The British Government can only reject as unfounded the claims by the Government of Argentina."

International Convention on
Liability and Compensation for damage in connection with the carriage of hazardous and noxious substances by sea, 1996
(HNS 1996)

Done at London, 3 May 1996
Not yet in force.

Convention Internationale de 1996
sur la responsabilité et l'indemnisation pour les dommages liés au transport par mer de substances nocives et potentiellement dangereuses
(HNS 1996)

Signée a Londres le 3 mai 1996
Pas encore en vigueur.

	Date of signature or deposit of instrument
Angola (accession)	4.X.2001
Cyprus (accession)	10.I.2005
Morocco (accession)	19.III.2003
Russian Federation (accession)[1]	20.III.2000
Samoa (accession)	18.V.2004
St. Kitts and Nevis (accession)	7.X.2004
Slovenia (accession)	21.VII.2004
Tonga (accession)	18.IX.2003

Number of Contracting States: 8.

[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
Not yet in force.

Convention Internationale
sur la responsabilité civile pour les dommages dus à la pollution par les hydrocarbures de soute

(BUNKER 2001)

Signée a Londres le 23 Mars 2001
Pas encore en vigueur.

	Date of signature or deposit of instrument
Cyprus (accession)	10.I.2005
Greece (accession)	22.XII.2005
Jamaica (accession)	2.V.2003
Latvia (accession)	19.IV.2005
Luxembourg (accession)[1]	21.XI.2005
Samoa (accession)	18.V.2004
Singapore (accession)	31.III.2006
Slovenia (accession)	20.V.2004
Spain (ratification)1	10.XII.2003
Tonga (accession)	18.IX.2003
United Kingdom (ratification) [1]	29.VI.2006

Number of Contracting States: 11,
representing approximately 9.07% of the world's merchant shipping

[1] With a reservation or declaration.

Convention for the suppression of unlawful acts against the safety of maritime navigation, 1988

(SUA 1988)

Done at Rome, 10 March 1988
Entry into force: 1 March 1992.

Convention pour la répression d'actes illicites contre la sécurité de la navigation maritime, 1988

(SUA 1988)

Signée a Rome le 10 Mars 1988
Entrée en vigueur: 1 Mars 1992.

	Date of deposit of instrument	Date of entry into force
Afghanistan (accession)	23.IX.2003	22.XII.2003
Albania (accession)	19.VI.2002	17.IX.2002
Algeria (accession)[1]	11.II.1998	12.V.1998
Argentina (ratification)[1]	17.VIII.1993	15.XI.1993
Armenia (accession)[1]	8.VI.2005	6.IX.2005
Australia (accession)	19.II.1993	20.V.1993
Austria (ratification)	28.XII.1989	1.III.1992
Azerbaijan (accession)[1]	26.I.2004	25.IV.2004
Bahamas (accession)	25.X.2005	23.I.2006
Bahrain (accession)	21.X.2005	19.I.2006
Bangladesh (accession)	9.VI.2005	7.IX.2005
Barbados (accession)	6.V.1994	4.VIII.1994
Belarus (accession)	4.XII.2002	4.III.2003
Belgium (accession)	11.IV.2005	10.VII.2005
Bolivia (accession)	13.II.2002	14.V.2002
Bosnia and Herzegovina (accession)	28.VII.2003	26.X.2003
Botswana (accession)	14.IX.2000	13.XII.2000
Brazil (ratification)[1]	25.X.2005	23.I.2006
Brunei Darussalam (ratification)	4.XII.2003	3.III.2004
Bulgaria (ratification)	8.VII.1999	6.X.1999
Burkina Faso (accession)	15.I.2004	14.IV.2004
Canada (ratification)[2]	18.VI.1993	16.IX.1993
Cape Verde (accession)	3.I.2003	3.IV.2003
Chile (ratification)	22.IV.1994	21.VII.1994
China (ratification)[1, 7]	20.VIII.1991	1.III.1992
Costa Rica (ratification)	25.III.2003	23.VI.2003
Croatia (accession)	18.VIII.2005	16.XI.2005
Cuba (accession)[2]	20.XI.2001	18.II.2002
Cyprus (accession)	2.II.2000	2.V.2000
Czech Republic (accession)	10.XII.2004	10.III.2005
Denmark (ratification)[1]	25.VIII.1995	23.XI.1995
Djibouti (accession)	9.VI.2004	7.IX.2004
Dominica (accession)	31.VIII.2001	29.XI.2001
Ecuador (accession)	10.III.2003	8.VI.2003

	Date of deposit of instrument	Date of entry into force
Egypt (ratification)[1]	8.I.1993	8.IV.1993
El Salvador (accession)	7.XII.2000	7.III.2001
Equatorial Guinea (accession)	15.I.2004	14.IV.2004
Estonia (accession)	15.II.2002	16.V.2002
Finland (ratification)	12.XI.1998	10.II.1999
France (approval)[1]	2.XII.1991	1.III.1992
Gambia (accession)	1.XI.1991	1.III.1992
Germany[3] **(accession)**	6.XI.1990	1.III.1992
Ghana (accession)	1.XI.2002	30.I.2003
Greece (ratification)	11.VI.1993	9.IX.1993
Grenada (accession)	9.I.2002	9.IV.2002
Guinea (accession)	1.II.2005	2.V.2005
Guyana (accession)	30.I.2003	30.IV.2003
Honduras (accession)	17.V.2005	15.VIII.2005
Hungary (ratification)	9.XI.1989	1.III.1992
Iceland (accession)	28.V.2002	26.VIII.2002
India (accession)[1]	15.X.1999	13.I.2000
Ireland (accession)	10.IX.2004	9.XII.2004
Italy (ratification)	26.I.1990	1.III.1992
Jamaica (accession)[2]	17.VIII.2005	15.XI.2005
Japan (accession)	24.IV.1998	23.VII.1998
Jordan (accession)	2.VII.2004	30.IX.2004
Kazakhstan (accession)	24.XI.2003	22.II.2004
Kenya (accession)	21.I.2002	21.IV.2002
Kiribati (accession)	17.XI.2005	16.II.2006
Kuwait (accession)	30.VI.2003	28.IX.2003
Latvia (accession)	4.XII.2002	4.III.2003
Lebanon (accession)	16.XII.1994	16.III.1995
Liberia (ratification)	5.X.1995	3.I.1996
Libyan Arab Jamahiriya (accession)	8.VIII.2002	6.XI.2002
Liechtenstein (accession)	8.XI.2002	6.II.2003
Lithuania (accession)	30.I.2003	30.IV.2003
Mali (accession)	29.IV.2002	28.VII.2002
Malta (accession)	20.XI.2001	18.II.2002
Marshall Islands (accession)	29.XI.1994	27.II.1995
Mauritius (accession)	3.VIII.2004	1.XI.2004
Mexico (accession)[1]	13.V.1994	11.VIII.1994
Micronesia (accession)	10.II.2003	11.V.2003
Moldova (accession)[1]	11.X.2005	9.I.2006
Monaco (accession)	25.I.2002	25.IV.2002
Mongolia (accession)	22.XI.2005	20.II.2006
Morocco (ratification)	8.I.2002	8.IV.2002
Mozambique (accession)[1]	8.I.2003	8.IV.2003
Myanmar (accession)[1]	19.IX.2003	18.XII.2003
Namibia (accession)	10.VII.2004	18.X.2004
Nauru (accession)	11.VIII.2005	9.XI.2005

	Date of deposit of instrument	Date of entry into force
Netherlands (acceptance)[5]	5.III.1992	3.VI.1992
New Zealand (ratification)	10.VI.1999	8.IX.1999
Nigeria (ratification)	24.II.2004	24.V.2004
Norway (ratification)	18.IV.1991	1.III.1992
Oman (accession)	24.IX.1990	1.III.1992
Pakistan (accession)	20.IX.2000	19.IX.2000
Palau (accession)	4.XII.2001	4.III.2002
Panama (accession)	3.VII.2002	1.X.2002
Paraguay (accession)[2]	12.XI.2004	10.II.2005
Peru (accession)	19.VII.2001	17.X.2001
Philippines (ratification)	6.I.2004	5.IV.2004
Poland (ratification)	25.VI.1991	1.III.1992
Portugal (accession)[1]	5.I.1996	4.IV.1996
Qatar (accession)[1]	18.IX.2003	17.XII.2003
Republic of Korea (accession)	14.V.2003	12.VIII.2003
Romania (accession)	2.VI.1993	31.VIII.1993
Russian Federation (ratification)	4.V.2001	2.VIII.2001
St. Kitts and Nevis (accession)	17.I.2002	17.IV.2002
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent and the Grenadines (accession)	9.X.2001	7.I.2002
Samoa (accession)	18.V.2004	16.VIII.2004
Sao Tome and Principe	5.V.2006	3.VIII.2006
Saudi Arabia (accession)[6]	2.II.2006	3.V.2006
Senegal (accession)	9.VIII.2004	7.XI.2004
Serbia and Montenegro (accession)	10.V.2004	8.VIII.2004
Seychelles (ratification)	24.I.1989	1.III.1992
Singapore (accession)	3.II.2004	3.V.2004
Slovakia (accession)	8.XII.2000	8.III.2001
Slovenia (accession)	18.VII.2003	16.X.2003
South Africa (accession)	8.VII.2005	6.X.2005
Spain (ratification)	7.VII.1989	1.III.1992
Sri Lanka (accession)	4.IX.2000	3.XII.2000
Sudan (accession)	22.V.2000	20.VIII.2000
Swaziland (accession)	17.IV.2003	16.VII.2003
Sweden (ratification)	13.IX.1990	1.III.1992
Switzerland (ratification)	12.III.1993	10.VI.1993
Syrian Arab Republic (accession)	24.III.2003	22.VI.2003
Tajikistan (accession)	12.VIII.2005	10.XI.2005
Togo (accession)	10.III.2003	8.VI.2003
Tonga (accession)	6.XII.2002	6.III.2003
Trinidad and Tobago (accession)	27.VII.1989	1.III.1992
Tunisia (accession)[1]	6.III.1998	4.VI.1998
Turkey (ratification)[1]	6.III.1998	4.VI.1998
Turkmenistan (accession)	8.VI.1999	6.IX.1999
Tuvalu (accession)	2.XII.2005	2.III.2006
Uganda (accession)	11.XI.2003	9.II.2004

	Date of deposit of instrument	Date of entry into force
Ukraine (ratification)	21.IV.1994	20.VII.1994
United Arab Emirates (accession)[1]	15.IX.2005	14.XII.2005
United Kingdom (ratification)[1, 4]	3.V.1991	1.III.1992
United Republic of Tanzania (accession)	11.V.2005	9.VIII.2005
United States (ratification)	6.XII.1994	6.III.1995
Uruguay (accession)	10.VIII.2001	8.XI.2001
Uzbekistan (accession)	25.IX.2000	24.XII.2000
Vanuatu (accession)	18.II.1999	19.V.1999
Viet Nam (accession)	12.VII.2002	10.X.2002
Yemen (accession)	30.VI.2000	28.IX.2000

Number of Contracting States: 136 representing approximately 91.76% of the gross tonnage of the world's merchant shipping..

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[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.

* 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] 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.

Protocol for the
suppression of unlawful acts against the safety of fixed platforms located on the continental shelf, 1988

(SUA PROTOCOL 1988)

Done at Rome, 10 March 1988
Entry into force: 1 March 1992.

Protocole pour la
répression d'actes illicites contre la sécurité des plates-formes fixes situées sur le plateau continental, 1988

(SUA PROTOCOL 1988)

Signée a Rome le 10 Mars 1988
Entrée en vigueur: 1 Mars 1992.

	Date of deposit of instrument	Date of entry into force
Afghanistan (accession)	23.IX.2003	22.XII.2003
Albania (accession)	19.VI.2002	17.IX.2002
Argentina (ratification)	26.XI.2003	24.II.2004
Armenia (accession)	8.VI.2005	6.IX.2005
Australia (accession)	19.II.1993	20.V.1993
Austria (accession)	28.XII.1989	1.III.1992
Azerbaijan (accession)	26.I.2004	25.IV.2004
Bahamas (accession)	25.X.2005	23.I.2006
Bahrain (accession)	21.X.2005	19.I.2006
Bangladesh (accession)	9.VI.2005	7.IX.2005
Barbados (accession)	6.V.1994	4.VIII.1994
Belarus (accession)	4.XII.2002	4.III.2003
Belgium (accession)	11.IV.2005	10.VII.2005
Bolivia (accession)	13.II.2002	14.V.2002
Bosnia and Herzegovina (accession)	28.VII.2003	26.X.2003
Botswana (accession)	14.IX.2000	13.XII.2000
Brazil (ratification)[1]	25.X.2005	23.I.2006
Brunei Darussalam (ratification)	4.XII.2003	3.III.2004
Bulgaria (ratification)	8.VII.1999	6.X.1999
Burkina Faso (accession)	14.I.2004	13.IV.2004
Canada (ratification)[1]	18.VI.1993	16.IX.1993
Cape Verde (accession)	3.I.2003	3.IV.2003
Chile (ratification)	22.IV.1994	21.VII.1994
China (ratification)[2,6]	20.VIII.1991	1.III.1992
Costa Rica (ratification)	25.III.2003	23.VI.2003
Croatia (accession)	18.VIII.2005	16.XI.2005
Cuba (accession)[2]	20.XI.2001	18.II.2002
Cyprus (accession)	2.II.2000	2.V.2000
Czech Republic (accession)	10.XII.2004	10.III.2005
Denmark (ratification)[2]	25.VIII.1995	23.XI.1995
Djibouti (accession)	9.VI.2004	7.IX.2004

	Date of deposit of instrument	Date of entry into force
Dominica (accession)	12.X.2004	10.I.2005
Ecuador (accession)	10.III.2003	8.VI.2003
Egypt (ratification)[2]	8.I.1993	8.IV.1993
El Salvador (accession)	7.XII.2000	7.III.2001
Equatorial Guinea (accession)	15.I.2004	14.IV.2004
Estonia (accession)	28.I.2004	27.IV.2004
Finland (accession)	28.IV.2000	27.VII.2000
France (approval)[2]	2.XII.1991	1.III.1992
Germany[3] **(accession)**	6.XI.1990	1.III.1992
Ghana (accession)	1.XI.2002	30.I.2003
Greece (ratification)	11.VI.1993	9.IX.1993
Grenada (accession)	9.I.2002	9.IV.2002
Guinea (accession)	1.II.2005	2.V.2005
Guyana (accession)	30.I.2003	30.IV.2003
Honduras (accession)	17.V.2005	15.VIII.2005
Hungary (ratification)	9.XI.1989	1.III.1992
Iceland (accession)	28.V.2002	26.VIII.2002
India (accession)[2]	15.X.1999	13.I.2000
Ireland (accession)	10.IX.2004	9.XII.2004
Italy (ratification)	26.I.1990	1.III.1992
Jamaica (accession)[1]	19.VIII.2005	17.XI.2005
Japan (accession)	24.IV.1998	23.VII.1998
Jordan (accession)	2.VII.2004	30.IX.2004
Kazakhstan (accession)	24.XI.2003	22.II.2004
Kenya (accession)	21.I.2002	21.IV.2002
Kiribati (accession)	17.XI.2005	16.II.2006
Kuwait (accession)	30.VI.2003	28.IX.2003
Latvia (accession)	4.XII.2002	4.III.2003
Lebanon (accession)	16.XII.1994	16.III.1995
Liberia (ratification)	5.X.1995	3.I.1996
Libyan Arab Jamahiriya (accession)	8.VIII.2002	6.XI.2002
Liechtenstein (accession)	8.XI.2002	6.II.2003
Lithuania (accession)	30.I.2003	30.IV.2003
Mali (accession)	29.IV.2002	28.VII.2002
Malta (accession)	20.XI.2001	18.II.2002
Marshall Islands (accession)	16.X.1995	14.I.1996
Mauritius (accession)	3.VIII.2004	1.XI.2004
Mexico (accession)[1]	13.V.1994	11.VIII.1994
Moldova (accession)[2]	11.X.2005	9.I.2006
Monaco (accession)	25.I.2002	25.IV.2002
Mongolia (accession)	22.XI.2005	20.II.2006
Morocco (ratification)	8.I.2002	8.IV.2002
Mozambique (accession)	8.I.2003	8.IV.2003
Myanmar (accession)	19.IX.2003	18.XII.2003
Namibia (accession)	7.IX.2005	6.XII.2005

	Date of deposit of instrument	Date of entry into force
Nauru (accession)	11.VIII.2005	9.XI.2005
Netherlands (acceptance)[2,5]	5.III.1992	3.VI.1992
New Zealand (ratification)	10.VI.1999	8.IX.1999
Norway (ratification)	18.IV.1991	1.III.1992
Oman (accession)	24.IX.1990	1.III.1992
Pakistan (accession)	20.IX.2000	10.XII.2000
Palau (accession)	4.XII.2001	4.III.2002
Panama (accession)	3.VII.2002	1.X.2002
Paraguay (accession)[1]	12.XI.2004	10.II.2005
Peru (accession)	19.VII.2001	17.X.2001
Philippines (ratification)	6.I.2004	5.IV.2004
Poland (ratification)	25.VI.1991	1.III.1992
Portugal (accession)	5.I.1996	4.IV.1996
Qatar (accession)	18.IX.2003	17.XII.2003
Republic of Korea (accession)	10.VI.2003	8.IX.2003
Romania (accession)	2.VI.1993	31.VIII.1993
Russian Federation (ratification)	4.V.2001	2.VIII.2001
St. Lucia (accession)	20.V.2004	18.VIII.2004
St. Vincent and the Grenadines (accession)	9.X.2001	7.I.2002
Sao Tome and Principe	5.V.2006	3.VIII.2006
Saudi Arabia (accession)	2.II.2006	3.V.2006
Senegal (accession)	9.VIII.2004	7.XI.2004
Serbia and Montenegro (accession)	2.III.2005	31.V.2005
Seychelles (ratification)	24.I.1989	1.III.1992
Slovakia (accession)	8.XII.2000	8.III.2001
Slovenia (accession)	18.VII.2003	16.X.2003
South Africa (accession)	8.VII.2005	6.X.2005
Spain (ratification)	7.VII.1989	1.III.1992
Sudan(accession)	22.V.2000	20.VIII.2000
Swaziland (accession)	17.IV.2003	16.VII.2003
Sweden (ratification)	13.IX.1990	1.III.1992
Switzerland (ratification)	12.III.1993	10.VI.1993
Syrian Arab Republic (accession)	24.III.2003	22.VI.2003
Tajikistan (accession)	12.VIII.2005	10.XI.2005
Togo (accession)	10.III.2003	8.VI.2003
Tonga (accession)	6.XII.2002	6.III.2003
Trinidad and Tobago (accession)	27.VII.1989	1.III.1992
Tunisia (accession)	6.III.1998	4.VI.1998
Turkey (ratification)[2]	6.III.1998	4.VI.1998
Turkmenistan (accession)	8.VI.1999	6.IX.1999
Ukraine (ratification)	21.IV.1994	20.VII.1994
United Arab Emirates (accession)[2]	15.IX.2005	14.XII.2005
United Kingdom (ratification)[2, 4]	3.V.1991	1.III.1992
United States (ratification)	6.XII.1994	6.III.1995
Uruguay (accession)	10.VIII.2001	8.XI.2001

	Date of deposit of instrument	Date of entry into force
Uzbekistan (accession)	25.IX.2000	24.XII.2000
Vanuatu (accession)	18.II.1999	19.V.1999
Viet Nam (accession)	12.VII.2002	10.X.2002
Yemen (accession)	30.VI.2000	28.IX.2000

Number of Contracting States: 125, representing approximately 87.34% of the gross tonnage of the world's merchant shipping.

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[1] With a notification under article 3.

[2] With a reservation, declaration or statement.

[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.

* 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.

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO UNITED NATIONS AND UNITED NATIONS/IMO CONVENTIONS IN THE FIELD OF PUBLIC AND PRIVATE MARITIME LAW

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS DES NATIONS UNIES ET AUX CONVENTIONS DES NATIONS UNIES/OMI EN MATIERE DE DROIT MARITIME PUBLIC ET DE DROIT MARITIME PRIVE

r	=	ratification
a	=	accession
A	=	acceptance
AA	=	approval
S	=	definitive signature

Notes de l'editeur / Editor's notes:

- Les dates mentionnées sont les dates du dépôt des instruments.
- The dates mentioned are the dates of the deposit of instruments.

United Nations Convention on a

Code of Conduct for liner conferences

Geneva, 6 April 1974
Entered into force: 6 October 1983

Convention des Nations Unies sur un

Code de Conduite des conférences maritimes

Genève, 6 avril 1974
Entrée en vigueur: 6 octobre 1983

Algeria	**(r)**	12.XII.1986
Bangladesh	**(a)**	24.VII.1975
Barbados	**(a)**	29.X.1980
Belgium	**(r)**	30.IX.1987
Benin	**(a)**	27.X.1975
Bulgaria	**(a)**	12.VII .1979
Burkina Faso	**(a)**	30.III.1989
Cameroon	**(a)**	15.VI.1976
Cape Verde	**(a)**	13.I.1978
Central African Republic	**(a)**	13.V.1977
Chile	**(S)**	25.VI.1975
China [1]	**(a)**	23.IX.1980
Congo	**(a)**	26.VII.1982
Costa Rica	**(r)**	27.X.1978
Croatia	**(r)**	8.X.1991
Cuba	**(a)**	23.VII.1976
Czech Republic	**(AA)**	4.VI.1979
Denmark (except Greenland and the Faroe Islands)	**(a)**	28.VI.1985
Egypt	**(a)**	25.I.1979
Ethiopia	**(r)**	1.IX.1978
Finland	**(a)**	31.XII.1985
France	**(AA)**	4.X.1985
Gabon	**(r)**	5.VI.1978
Gambia	**(S)**	30.VI.1975
Germany	**(r)**	6.IV.1983
Ghana	**(r)**	24.VI.1975
Guatemala	**(r)**	3.III.1976
Guinea	**(a)**	l9.VIII.1980
Guyana	**(a)**	7.I.1980
Honduras	**(a)**	12.VI.1979
India	**(r)**	14.II.1978
Indonesia	**(r)**	11.I.1977
Iraq	**(a)**	25.X.1978

[1] Applied to the Hong Kong Special Administrative Region with effect from 1.VII.1997.

Italy	**(a)**	30.V.1989
Ivory Coast	**(r)**	17.II.1977
Jamaica	**(a)**	20.VII.1982
Jordan	**(a)**	17.III.1980
Kenya	**(a)**	27.II.1978
Korea, Republic of	**(a)**	ll.V.1979
Kuwait	**(a)**	31.III.1986
Lebanon	**(a)**	30.IV.1982
Madagascar	**(a)**	23.XII.1977
Malaysia	**(a)**	27.VIII.1982
Mali	**(a)**	15.III.1978
Mauritania	**(a)**	21.III.1988
Mauritius	**(a)**	16.IX.1980
Mexico	**(a)**	6.V.1976
Morocco	**(a)**	11.II.1980
Mozambique	**(a)**	21.IX.1990
Netherlands (for the Kingdom in Europe only)	**(a)**	6.IV.1983
Niger	**(r)**	13.I.1976
Nigeria	**(a)**	10.IX.1975
Norway	**(a)**	28.VI.1985
Pakistan	**(S)**	27.VI.1975
Peru	**(a)**	21.XI.1978
Philippines	**(r)**	2.III.1976
Portugal	**(a)**	13.VI.1990
Qatar	**(a)**	31.X.1994
Romania	**(a)**	7.I.1982
Russian Federation	**(A)**	28.VI.1979
Saudi Arabia	**(a)**	24.V.1985
Serbia and Montenegro	**(d)**	12.III.2001
Senegal	**(r)**	20.V.1977
Sierra Leone	**(a)**	9.VII.1979
Slovakia	**(AA)**	4.VI.1979
Somalia	**(a)**	14.XI.1988
Spain	**(a)**	3.II.1994
Sri Lanka	**(S)**	30.VI.1975
Sudan	**(a)**	16.III.1978
Sweden	**(a)**	28.VI.1985
Togo	**(r)**	12.I.1978
Trinidad and Tobago	**(a)**	3.III.1983
Tunisia	**(a)**	15.III.1979
United Kingdom	**(a)**	28.VI.1985
United Republic of Tanzania	**(a)**	3.XI.1975
Uruguay	**(a)**	9.VII.1979
Venezuela	**(S)**	30.VI.1975
Zambia	**(a)**	8.IV.1988

United Nations Convention on the

Carriage of goods by sea

Hamburg, 31 March 1978

"HAMBURG RULES"

Entered into force:
1 November 1992

Convention des Nations Unies sur le

Transport de marchandises par mer

Hambourg 31 mars 1978

"REGLES DE HAMBOURG"

Entrée en vigueur:
1 novembre 1992

Austria	**(r)**	29.VII.1993
Barbados	**(a)**	2.II.1981
Botswana	**(a)**	16.II.1988
Burkina Faso	**(a)**	14.VIII.1989
Burundi	**(a)**	4.IX.1998
Cameroon	**(a)**	21.IX.1993
Chile	**(r)**	9.VII.1982
Czech Republic [1]	**(r)**	23.VI.1995
Egypt	**(r)**	23.IV.1979
Gambia	**(r)**	7.II.1996
Georgia	**(a)**	21.III.1996
Guinea	**(r)**	23.I.1991
Hungary	**(r)**	5.VII.1984
Jordan	**(a)**	10.V.2001
Kenya	**(a)**	31.VII.1989
Lebanon	**(a)**	4.IV.1983
Lesotho	**(a)**	26.X.1989
Liberia	**(a)**	16.IX.2005
Malawi	**(r)**	18.III.1991
Morocco	**(a)**	12.VI.1981
Nigeria	**(a)**	7.XI.1988
Paraguay	**(a)**	19.VII.2005
Romania	**(a)**	7.I.1982
Saint Vincent and the Grenadines	**(a)**	12.IX.2000
Senegal	**(r)**	17.III.1986
Sierra Leone	**(r)**	7.X.1988
Syrian Arab Republic	**(a)**	16.X.2002
Tanzania, United Republic of	**(a)**	24.VII.1979
Tunisia	**(a)**	15.IX.1980
Uganda	**(a)**	6.VII.1979
Zambia	**(a)**	7.X.1991

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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.

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

Convention des Nations Unies sur le

Transport multimodal international de marchandises

Genève 24 mai 1980
Pas encore en vigueur.

United Nations Convention on the Law of the Sea (UNCLOS 1982)

Montego Bay 10 December 1982
Entered into force:
16 November 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
Bahamas	29.VII.1983
Bahrain	30.V.1985
Bangladesh	27.VII.2001
Barbados	12.X.1993
Belgium	13.XI.1998
Belize	13.VIII.1983
Benin	16.X.1997
Bolivia	28.IV.1995
Bosnia and Herzegovina	12.I.1994
Botswana	2.V.1990
Brazil	22.XII.1988
Brunei Darusssalam	5.XI.1996
Bulgaria	15.V.1996

Convention des Nations Unies sur les Droit de la Mer

Montego Bay 10 decembre 1982
Entrée en vigueur:
16 Novembre 1994

Burkina Faso	25.I.2005
Cameroon	19.XI.1985
Canada	7.XI.2003
Cape Verde	10.VIII.1987
Chile	25.VIII.1997
China	7.VI.1996
Comoros	21.VI.1994
Congo, Democratic Republic of	17.II.1989
Cook Islands	15.II.1995
Costa Rica	21.IX.1992
Côte d'Ivoire	28.VII.1995
Croatia	5.IV.1995
Cuba	15.VIII.1984
Cyprus	12.XII.1988
Czech Republic	21.VI.1996
Denmark	16.XI.2004
Djibouti	8.X.1991
Dominica	24.X.1991
Egypt	26.VIII.1983
Equatorial Guinea	21.VII.1997
Estonia	26.VIII.2005
European Community	1.IV.1998
Fiji	10.XII.1982
Finland	21.VI.1996
France	11.IV.1996
Gabon	11.III.1988
Gambia	22.V.1984
Georgia	21.III.1996
Germany	14.X.1994
Ghana	7.VI.1983
Greece	21.VII.1995
Grenada	25.IV.1991
Guatemala	11.II.1997
Guinea	6.IX.1985
Guinea-Bissau	25.VIII.1986
Guyana	16.XI.1993
Haiti	31.VII.1996
Honduras	5.X.1993
Hungary	5.II.2002
Iceland	21.VI.1985
India	29.VI.1995
Indonesia	3.II.1986
Iraq	30.VII.1985
Ireland	21.VI.1996
Italy	13.I.1995
Jamaica	21.III.1983
Japan	20.VI.1996
Jordan	27.XI.1995
Kenya	2.III.1989
Kiribati	24.II.2003
Korea, Republic of	29.I.1996

Kuwait	2.V.1986
Lao People's Democratic Republic	5.VI.1998
Latvia	23.XII.2004
Lebanon	5.I.1995
Lituania	12.XI.2003
Luxembourg	5.X.2000
Madagascar	22.VIII.2002
Malaysia	14.X.1996
Maldives	7.IX.2000
Mali	16.VII.1985
Malta	20.V.1993
Marshall Islands	9.VIII.1991
Mauritania	17.VII.1996
Mauritius	4.XI.1994
Mexico	18.III.1983
Micronesia, Federated States of	29.IV.1991
Monaco	20.III.1996
Mongolia	13.VIII.1996
Mozambique	13.III.1997
Myanmar	21.V.1996
Namibia, United Nations Council for	18.IV.1983
Nauru	23.I.1996
Nepal	2.XI.1998
Netherlands	28.VI.1996
New Zeland	19.VII.1996
Nicaragua	3.V.2000
Nigeria	14.VIII.1986
Norway	24.VI.1996
Oman	17.VIII.1989
Pakistan	26.II.1997
Palau	30.IX.1996
Panama	1.VII.1996
Papua New Guinea	14.I.1997
Paraguay	26.IX.1986
Philippines	8.V.1984
Poland	13.XI.1998
Portugal	3.XI.1997
Qatar	7.XII.2002
Romania	17.XII.1996
Russian Federation	12.III.1997
Samoa	14.VIII.1995
St. Kitts and Nevis	7.I.1993
St. Lucia	27. III.1985
St. Vincent and the Grenadines	1.X.1993
Sao Tomé and Principe	3.XI.1987
Saudi Arabia	24.IV.1996
Senegal	25.X.1984
Serbia and Montenegro	12.III.2001
Seychelles	16.IX.1991
Sierra Leone	12.XII.1994
Singapore	17.XI.1994

Slovakia	8.V.1996
Slovenia	16.VI.1995
Solomon Islands	23.VI.1997
Somalia	24.VII.1989
South Africa	23.XII.1997
Spain	15.I.1997
Sri Lanka	19.VII.1994
Sudan	23.I.1985
Suriname	9.VII.1998
Sweden	25.VI.1996
Tanzania, United Republic of	30.IX.1985
The Former Yugoslav Republic of Macedonia	19.VIII.1994
Togo	16.IV.1985
Tonga	2.VIII.1995
Trinidad and Tobago	25.IV.1986
Tunisia	24.IV.1985
Tuvalu	8.XII.2002
Uganda	9.XI.1990
Ukraine	26.VII.1999
United Kingdom	25.VII.1997
Uruguay	10.XII.1992
Vanautu	10.VIII.1999
Viet Nam	25.VII.1994
Yemen, Democratic Republic of	21.VII.1987
Zambia	7.III.1983
Zimbabwe	24.II.1993

United Nations Convention on Conditions for
Registration of ships

Geneva, 7 February 1986
Not yet in force.

Convention des Nations Unies sur les Conditions d'
Immatriculation des navires

Genève, 7 février 1986
Pas encore entrée en vigueur.

Albania	**(a)**	4.XII.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
Oman	**(a)**	18.X.1990
Syrian Arab Republic	**(a)**	29.IX.2004

United Nations Convention on
the Liability of operators of transport terminals in the international trade

Done at Vienna 19 April 1991
Not yet in force.

Gabon	**(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.

International Convention on
Maritime liens and mortgages, 1993

Done at Geneva,
6 May 1993
Entered into force: 5 September 2004

Ecuador	**(a)**	16.III.2004
Estonia	**(a)**	7.II.2003
Monaco	**(a)**	28.III.1995
Nigeria	**(a)**	5.III.2004
Russian Federation	**(a)**	4.III.1999
Saint Vincent and the Grenadines	**(a)**	11.III.1997
Spain	**(a)**	7.VI.2002
Syrian Arab Republic	**(a)**	8.X.2003
Tunisia	**(r)**	2.II.1995
Ukraine	**(a)**	27.II.2003
Vanuatu	**(a)**	10.VIII.1999

Convention Internationale de
1993 su les Privilèges et hypothèques maritimes

Signée à Genève
le 6 mai 1993
Entrée en vigueur: 5 septembre 2004

International Convention on
Arrest of Ships, 1999

Done at Geneva,
12 March 1999
Not yet in force.

Albania	**(a)**	4.X.2004
Algeria	**(a)**	7.V.2004
Bulgaria	**(r)**	27.VII.2000
Estonia	**(a)**	11.V.2001
Latvia	**(a)**	7.XII.2001
Spain	**(a)**	7.VI.2002
Syrian Arab Republic	**(a)**	16.X.2002

Convention Internationale de
1999 sur la saisie conservatoire des navires

Fait à Genève
le 12 Mars 1999
Pas encore en vigueur.

STATUS OF THE RATIFICATIONS OF UNESCO CONVENTIONS

UNESCO Convention on the Protection of the Underwater Cultural Heritage

Done at Paris 2 November 2001
Not yet in force.

	Date of deposit of instrument
Panama (ratification)	20.V.2003
Bulgaria (ratification)	04.X.2003
Croatia (ratification)	01.XII.2004
Spain (ratification)	06.VI.2005
Libyan Arab Jamahiriya (ratification)	23.VI.2005
Nigeria (ratification)	21.X.2005
Lithuania (ratification)	12.VI.2006
Mexico (ratification)	05.VIII.2006
Paraguay (ratification)	07.IX.2006
Portugal (ratification)	21.IX.2006

STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO UNIDROIT CONVENTIONS IN THE FIELD OF PRIVATE MARITIME LAW

ETAT DES RATIFICATIONS ET ADHESIONS AUX CONVENTIONS D'UNIDROIT EN MATIERE DE DROIT MARITIME PRIVE

Unidroit Convention on
International financial leasing 1988

Done at Ottawa 28 May 1988
Entered into force.
1 May 1995

Convention de Unidroit sur
le Creditbail international 1988

Signée à Ottawa 28 mai 1988
Entré en vigueur:
1 Mai 1995

Belarus	**(a)**	18.VIII.1998
France	**(r)**	23.IX.1991
Hungary	**(a)**	7.V.1996
Italy	**(r)**	29.XI.1993
Latvia	**(a)**	6.VIII.1997
Nigeria	**(r)**	25.X.1994
Panama	**(r)**	26.III.1997
Russian Federation	**(a)**	3.VI.1998
Uzbekistan, Republic of	**(a)**	6.VII.2000

CONFERENCES

OF THE COMITE MARITIME INTERNATIONAL

I. BRUSSELS - 1897
President: Mr. Auguste BEERNAERT.
Subjects: Organization of the International Maritime Committee - Collision - Shipowners' Liability.

II. ANTWERP - 1898
President: Mr. Auguste BEERNAERT.
Subjects: Liability of Owners of sea-going vessels.

III. LONDON - 1899
President: Sir Walter PHILLIMORE.
Subjects: Collisions in which both ships are to blame - Shipowners' liability.

IV. PARIS - 1900
President: Mr. LYON-CAEN.
Subjects: Assistance, salvage and duty to tender assistance - Jurisdiction in collision matters.

V. HAMBURG - 1902
President: Dr. Friedrich SIEVEKING.
Subjects: International Code on Collision and Salvage at Sea - Jurisdiction in collision matters - Conflict of laws as to owner-ship of vessels.

VI. AMSTERDAM - 1904
President: Mr. E.N. RAHUSEN.
Subjects: Conflicts of law in the matter of Mortgages and Liens on ships. - Jurisdiction in collision matters - Limitation of Shipowners' Liability.

VII. LIVERPOOL - 1905
President: Sir William R. KENNEDY.
Subjects: Limitation of Shipowners' Liability - Conflict of Laws as to Maritime Mortgages and Liens - Brussels Diplomatic Conference.

VIII. VENICE - 1907
President: Mr. Alberto MARGHIERI.
Subjects: Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Conflict of law as to Freight.

IX. BREMEN - 1909
President: Dr. Friedrich SIEVEKING.
Subjects: Conflict of laws as to Freight - Compensation in respect of personal injuries - Publication of Maritime Mortgages and Liens.

X. PARIS - 1911
President: Mr. Paul GOVARE.
Subjects: Limitation of Shipowners' Liability in the event of loss of life or personal injury - Freight.

XI. COPENHAGEN - 1913
President: Dr. J.H. KOCH.
Subjects: London declaration 1909 - Safety of Navigation - International Code of Affreightment - Insurance of enemy property.

XII. ANTWERP - 1921
President: Mr. Louis FRANCK.
Subjects: International Conventions relating to Collision and Salvage at sea. - Limitation of Shipowners' Liability - Maritime Mortgages and Liens - Code of Affreightment - Exonerating clauses.

XIII LONDON - 1922
President: Sir Henry DUKE.
Subjects: Immunity of State-owned ships - Maritime Mortgage and Liens. - Exonerating clauses in Bills of lading.

XIV. GOTHENBURG - 1923
President: Mr. Efiel LÖFGREN.
Subjects: Compulsory insurance of passengers - Immunity of State owned ships - International Code of Affreightment - International Convention on Bills of Lading.

XV. GENOA - 1925
President: Dr. Francesco BERLINGIERI.
Subjects: Compulsory Insurance of passengers - Immunity of State owned ships - International Code of Affreightment - Maritime Mortgages and Liens.

XVI. AMSTERDAM - 1927
President: Mr. B.C.J. LODER.
Subjects: Compulsory insurance of passengers - Letters of indemnity - Ratification of the Brussels Conventions.

XVII. ANTWERP - 1930
President: Mr. Louis FRANCK.
Subjects: Ratification of the Brussels Conventions - Compulsory insurance of passengers - Jurisdiction and penal sanctions in matters of collision at sea.

XVIII. OSLO - 1933
President: Mr. Edvin ALTEN.
Subjects: Ratification of the Brussels Conventions - Civil and penal jurisdiction in matters of collision on the high seas - Provisional arrest of ships - Limitation of Shipowners' Liability.

XIX. PARIS - 1937
President: Mr. Georges RIPERT.
Subjects: Ratification of the Brussels Conventions - Civil and penal jurisdiction in the event of collision at sea - Arrest of ships - Commentary on the Brussels Conventions - Assistance and Salvage of and by Aircraft at sea.

XX. ANTWERP - 1947
President: Mr. Albert LILAR.
Subjects: Ratification of the Brussels Conventions, more especially of the Convention on Immunity of State-owned ships - Revision of the Convention on Limitation of the Liability of Owners of sea-going vessels and of the Convention on Bills of Lading - Examination of the three draft conventions adopted at the Paris Conference 1937 - Assistance and Salvage of and by Aircraft at sea - York and Antwerp Rules; rate of interest.

XXI. AMSTERDAM - 1948
President: Prof. J. OFFERHAUS
Subjects: Ratification of the Brussels International Convention - Revision of the York-Antwerp Rules 1924 - Limitation of Shipowners' Liability (Gold Clauses) - Combined Through Bills of Lading - Revision of the draft Convention on arrest of ships - Draft of creation of an International Court for Navigation by Sea and by Air.

XXII. NAPLES - 1951
President: Mr. Amedeo GIANNINI.
Subjects: Brussels International Conventions - Draft convention relating to Provisional Arrest of Ships - Limitation of the liability of the Owners of Sea-going Vessels and Bills of Lading (Revision of the Gold clauses) - Revision of the Conventions of Maritime Hypothèques and Mortgages - Liability of Carriers by Sea towards Passengers - Penal Jurisdiction in matters of collision at Sea.

XXIII. MADRID - 1955
President: Mr. Albert LILAR.
Subjects: Limitation of Shipowners' Liability - Liability of Sea Carriers towards passengers - Stowaways - Marginal clauses and letters of indemnity.

XXIV. RIJEKA - 1959
President: Mr. Albert LILAR
Subjects: Liability of operators of nuclear ships - Revision of Article X of the International Convention for the Unification of certain Rules of law relating to Bills of Lading - Letters of Indemnity and Marginal clauses. Revision of Article XIV of the International Convention for the Unification of certain rules of Law relating to assistance and salvage at sea - International Statute of Ships in Foreign ports - Registry of operations of ships.

XXV. ATHENS - 1962
President: Mr. Albert LILAR
Subjects: Damages in Matters of Collision - Letters of Indemnity - International Statute of Ships in Foreign Ports - Registry of Ships - Coordination of the Convention of Limitation and on Mortgages - Demurrage and Despatch Money - Liability of Carriers of Luggage.

XXVI. STOCKHOLM - 1963
President: Mr. Albert LILAR
Subjects: Bills of Lading - Passenger Luggage - Ships under construction.

XXVII. NEW YORK - 1965
President: Mr. Albert LILAR
Subjects: Revision of the Convention on Maritime Liens and Mortgages.

XXVIII. TOKYO - 1969
President: Mr. Albert LILAR
Subjects: "Torrey Canyon" - Combined Transports - Coordination of International Convention relating to Carriage by Sea of Passengers and their Luggage.

XXIX. ANTWERP - 1972
President: Mr. Albert LILAR
Subjects: Revision of the Constitution of the International Maritime Committee.

XXX. HAMBURG - 1974
President: Mr. Albert LILAR
Subjects: Revisions of the York/Antwerp Rules 1950 - Limitation of the Liability of the Owners of Seagoing vessels - The Hague Rules.

XXXI. RIO DE JANEIRO - 1977
President: Prof. Francesco BERLINGIERI
Subjects: Draft Convention on Jurisdiction, Choice of law and Recognition and enforcement of Judgements in Collision matters. Draft Convention on Off-Shore Mobile Craft.

XXXII MONTREAL - 1981
President: Prof. Francesco BERLINGIERI
Subjects: Convention for the unification of certain rules of law relating to assistance and salvage at sea - Carriage of hazardous and noxious substances by sea.

XXXIII. LISBON- 1985
President: Prof. Francesco BERLINGIERI
Subjects: Convention on Maritime Liens and Mortgages - Convention on Arrest of Ships.

XXXIV. PARIS - 1990
President: Prof. Francesco BERLINGIERI
Subjects: Uniformity of the Law of Carriage of Goods by Sea in the 1990's - CMI Uniform Rules for Sea Waybills - CMI Rules for Electronic Bills of Lading - Revision of Rule VI of the York-Antwerp Rules 1974.

XXXV. SYDNEY - 1994
President: Prof. Allan PHILIP
Subjects: Review of the Law of General Average and York-Antwerp Rules 1974 (as amended 1990) - Draft Convention on Off-Shore Mobile Craft - Assessment of Claims for Pollution Damage - *Special Sessions:* Third Party Liability - Classification Societies - Marine Insurance: Is the doctrine of Utmost Good Faith out of date?

XXXVI. ANTWERP - 1997 - CENTENARY CONFERENCE
President: Prof. Allan PHILIP
Subjects: Off-Shore Mobile Craft - Towards a Maritime Liability Convention - EDI - Collision and Salvage - Wreck Removal Convention - Maritime Liens and Mortgages, Arrest of Ships - Classification Societies - Carriage of Goods by Sea - The Future of CMI.

XXXVII. SINGAPORE – 2001
President: Patrick GRIGGS
Subjects: Issues of Transport Law - Issues of Marine Insurance - General Average - Implementation of Conventions - Piracy - Passengers Carried by Sea.

XXXVIII. VANCOUVER – 2004
President: Patrick GRIGGS
Subjects: Transport Law - General Average - Places of Refuge for Ships in Distress - Pollution of the Marine Environment - Maritime Security - Marine Insurance - Bareboat Chartered Vessels - Implementation of the Salvage Convention.

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