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12-15 FEBRUARY 2006

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PART I

Organization of the CMI
Comité Maritime International

CONSTITUTION

2001

PART I - GENERAL

Article 1
Name and Object

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

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

Article 2
Existence and Domicile

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

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

STATUTS

2001¹

Ière PARTIE - DISPOSITIONS GENERALES

Article 1er
Nom et objet

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

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

Article 2
Existence et siège

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

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

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

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

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

b) Lorsqu’une Association nationale (ou multinationale) Membre du Comité Maritime International n’a pas la personnalité morale selon le droit du pays où cette association est établie les membres (qui sont des personnes physiques ou des personnes morales légalement constituées selon les lois et usages de leur pays d’origine) de cette Association, agissent ensemble selon leur droit national et seront sensés constituer l’Association membre en ce qui concerne l’affiliation de celle-ci au Comité Maritime International.

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

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

d) Nationals of States where there is no Member Association in existence and who have demonstrated an interest in the object of the Comité Maritime International may upon the proposal of the Executive Council be elected as Provisional Members. A primary objective of Provisional Membership is to facilitate the organization and establishment of new Member national or regional Associations of Maritime Law. Provisional Membership is not normally intended to be permanent, and the status of each Provisional Member will be reviewed at three-year intervals. However, individuals who have been Provisional Members for not less than five years may upon the proposal of the Executive Council be elected by the Assembly as Titulary Members, to the maximum number of three such Titulary Members from any one State. The Provisional Members of the Comité Maritime International are identified in a list to be published annually.

e) The Assembly may elect to Membership *honoris causa* any individual person who has rendered exceptional service to the Comité Maritime International or in the attainment of its object, with all of the rights and privileges of a Titulary Member but without payment of subscriptions. Members *honoris causa* may be designated as honorary officers of the Comité Maritime International if so proposed by the Executive Council. Members *honoris causa* shall not be attributed to any Member Association or State, but shall be individual members of the Comité Maritime International as a whole. The Members *honoris causa* of the Comité Maritime International are identified in a list to be published annually.

f) International organizations which are interested in the object of the Comité Maritime International may be elected as Consultative Members. The Consultative Members of the Comité Maritime International are identified in a list to be published annually.

II

a) Members may be expelled from the Comité Maritime International by reason:
   (i) of default in payment of subscriptions;
   (ii) of conduct obstructive to the object of the Comité as expressed in the Constitution; or
   (iii) of conduct likely to bring the Comité or its work into disrepute.

b) (i) A motion to expel a Member may be made:
   (A) by any Member Association or Titulary Member of the Comité;


II

a) Des membres peuvent être exclus du Comité Maritime International en raison
   (i) de leur carence dans le paiement de leur contribution;
   (ii) de leur conduite faisant obstacle à l’objet du Comité tel qu’énoncé aux statuts;
   (iii) de leur conduite susceptible de discréditer le Comité ou son 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
filed with the Member in question. If less than ninety (90) days have
elapsed, consideration of the motion shall be deferred to the next
succeeding Assembly.

e) (i) The Member in question may offer a written response to the motion
to expel, and/or may address the Assembly for a reasonable period in
debate upon the motion.

(ii) In the case of a motion to expel which is based upon default in
payment under paragraph II(a)(i) of this Article, actual payment in
full of all arrears currently owed by the Member in question shall
constitute a complete defence to the motion, and upon
acknowledgment of payment by the Treasurer the motion shall be
deemed withdrawn.

f) (i) In the case of a motion to expel which is based upon default in
payment under paragraph II(a) of this Article, expulsion shall
require the affirmative vote of a simple majority of the Member
Associations present, entitled to vote, and voting.

(ii) In the case of a motion to expel which is based upon paragraph
II(a)(ii) and (iii) of this Article, expulsion shall require the
affirmative vote of a two-thirds majority of the Member Associations
present, entitled to vote, and voting.

g) Amendments to these provisions may be adopted in compliance with
Article 6. Proposals of amendments shall be made in writing and shall be
transmitted to all National Associations at least sixty (60) days prior to
the annual meeting of the Assembly at which the proposed amendments
will be considered.

III

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

(B) par le Conseil exécutif.

(ii) Une requête d’exclusion d’un Membre se fera par écrit et en exposerà 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.
Constitution

Article 7
Fonctions
Les fonctions de l’Assemblée consistent à:

a) élire les Membres du Bureau du Comité Maritime International;
b) élire des Membres du Comité Maritime International et en suspendre ou exclure;
c) fixer les montants des cotisations dues par les Membres 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


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

D’une manière générale, la mission du Président consiste à assurer la continuité et le développement de l’œuvre 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 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 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,

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

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

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

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

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

f) maintenir à jour et assurer la publication annuelle des listes de Membres en application de l’article 3;

g) d’une manière générale accomplir la charge quotidienne du secrétariat du Comité Maritime International.

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


**Article 14**

**Les Conseillers exécutifs**

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

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

Chaque Conseiller exécutif est élu pour un mandat de 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,
Constitution

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 présentions 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 diffusées 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’œuvre 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**


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 ETVotes**

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.


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 remisé 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 remisé au défaut de paiement.

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

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

Article 22
Questions financières et responsabilités

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


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

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

Article 23
Loi applicable

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

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(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

(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

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.

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

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

GUIDELINES FOR PROPOSING THE ELECTION OF TITULARY AND PROVISIONAL MEMBERS

1999

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.
HEADQUARTERS OF THE CMI
SIÈGE DU CMI

Everdijstraat 43
2000 ANTWERP
BELGIUM

Tel.: +32 3 227.3526 - Fax: +32 3 227.3528
E-mail: admini@cmi-imc.org
Website: www.comitemaritime.org

MEMBERS OF THE EXECUTIVE COUNCIL
MEMBRES DU CONSEIL EXÉCUTIF

President - Président: Jean-Serge ROHART
15, Place du Général Catroux
F-75017 Paris, France
Tel.: +33 1 46.22.51.73 – Fax: +33 1 47.66.06.37
E-mail: js.rohart@villeneau.com

Past President: Patrick J.S. GRIGGS (1997)
International House,
1 St. Katharine’s Way,
London E1W 1UN, England.
Tel.: +44 20 7623.2011 – Fax: +44 20 7623.3225
E-mail: p.griggs@incelaw.com


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.
**Officers**

### Vice-Presidents: Karl-Johan GOMBRII (1994)
Nordisk Defence Club, Kristinelundveien 22
P.O.Box 3033, Elisenberg N-0207 Oslo, Norway.
Tel.: +47 22 13.56.00 – Fax: +47 22 43.00.35
E-mail: kjgombrii@nordisk.no

### Vice-Présidents:
Stuart HETHERINGTON (1997)
Colin Biggers & Paisley
Level 42, 2 Park Street, Sydney, Australia.
Tel.: +61 2 8281.4555 - Fax: +61 2 8281.4567
E-mail: swh@cbp.com.au

### Secretary General: Nigel FRAWLEY
107A Cottingham St.,
Toronto, Ontario M4V 1B9, Canada
Tel.: home +1 416 923.0333 – cottage +1 518 962.4587
Fax: +1 416 944.9020
E-mail: nhfrawley@earthlink.net

### Administrator: Wim FRANSEN (2002)
2000 Antwerpen, Belgium
Tel.: +32 3 203.4500 - Fax: +32 3 203.4501
E-mail: wimfransen@fransenadvocaten.com

---


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.
Officers

**Treasurer:** Benoit GOEMANS

Goemans, De Scheemaeker Advocaten
Ellermanstraat 46
Antwerp B-2060 Belgium
Tel.: +32 3 231.1331 – Direct: +32 3 231.5436 - Fax: +32 3 231.1333
E-mail: benoit.goemans@GDSadvocaten.be

**Members:**

José M. ALCANTARA

C/o Amya
C/Princesa, 61, 5°
28008 Madrid, Spain
Tel.: +34 91 548.8328 – Fax: +34 91 548.8256
E-mail: jmalcantara@amya.es

Christopher O. DAVIS

Shareholder
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
201 St. Charles Avenue, Suite 3600,
New Orleans, LA 70170, U.S.A.
Tel.: +1 504 566.5200 – Fax: +1 504 636.4000
E-mail: codavis@bakerdonelson.com

Justice Johanne GAUTHIER

Federal Court of Canada
Trial Division
90 Sparks Street, 11th Floor
Ottawa, Ont. K1A OH9, Canada
Tel.: +1 613 995.1268
E-mail: j.gauthier@fct-cf.gc.ca

José Tomás GUZMAN SALCEDO

Hendaya 60. Of. 503,
Zip Code: 7550188 Santiago, Chile
Tel. +56 2 3315860/61/62/63
Fax: +56 2 3315811
E-mail: jtomasguzman.s@tie.cl

---


8 Lawyer with practice in Madrid since 1973. LL.B. from the University of Madrid School of Law. Maritime Arbitrator. President of the Spanish Maritime Law Association. Executive Councillor of the Comité Maritime International (CMI) and of Association Internationale de Dispaucheurs 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
speciality. Has lectured on Maritime and Insurance Law at the Catholic University of Chile and at the University of Chile, Valparaiso. Titulary Member of the Comité Maritime International, Vice President of the Chilean Maritime Law Association. Vice President for Chile of the Iberic American Institute of Maritime Law. Past President of the Association of Loss Adjusters of Chile. Arbitrator at the Mediation and Arbitration Centers of the Chambers of Commerce of Santiago and Valparaiso. Arbitrator at the Chilean Branch of AIDA (Association Internationale de Droit d’assurance). Co-author of the Maritime and Marine Insurance Legislation at present in force as part of the Commercial Code. Member of the Commission for the modification of Insurance Law. Participated in drafting the law applicable to loss adjusting.

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


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


12 Born in 1934 in Sebastopol; married; graduated from the Law School of the Institute of Foreign Trade in Moscow; 1961/62 school 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 UNCTRAL (since 1970), Council of Mutual Economic Assistance, International Council for Commercial Arbitration, UN
Officers

Henry H. Li\(^{13}\)
Law School of Dalian Maritime University
1 Linghai Road, Dalian, China
Tel.: +86 411.8472.9316 - Fax: +86 411.8472.7749
E-mail: szshenry@public.szptt.net.cn

Gregory J. Timagenis (2000)\(^{14}\)
57, Notara Street
18535 Piraeus, Greece
Tel.: +30 210 422.0001 - Fax: +30 210 422.1388
E-mail: git@timagenislaw.com

Publications Editor:
Francesco Berlingieri
10 Via Roma 16121 Genova Italia.
Tel.: +39 010 586.441 - Fax: +39 010 594.805
E-mail: slb@dirmar.it

Auditors:
DE MOL, MEULDERMANS & PARTNERS
Mr. Kris Meuldermans
Herentalsebaan, 271
B-2150 Borsbeek, Belgium
Tel.: +32 3 322.3335 - Fax: +32 3 322.3345
E-mail: dmaudit@skynet.be


\(^{14}\) 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.
HONORARY OFFICERS

PRESIDENT AD HONOREM
Francesco BERLINGIERI
10 Via Roma, 16121 Genova, Italia.
Tel.: +39 010 586.441 - Fax: +39 010 594.805 - E-mail: slb@dirmar.it

PRESIDENT HONORIS CAUSA
Patrick J.S. GRIGGS
International House, 1 St. Katharine’s Way, London E1W 1UN, England.
Tel.: +44 20 7623.2011 - Fax: +44 20 7623.3225 - E-mail:p.griggs@incelaw.com

VICE PRESIDENT HONORIS CAUSA
Frank L. WISWALL JR.
Meadow Farm, 851 Castine Road, Castine, Maine 04421-0201, U.S.A.
Tel: +1 207 326.9460 - Fax: +1 202 572.8279 - Email: FLW@Silver-Oar.com

TREASURER HONORIS CAUSA
Henri VOET
Kipdorp, 53, 2000 Antwerpen 1, Belgique
Tel.: +32 3 218.7464 - Fax: +32 3 218.6721

HONORARY VICE-PRESIDENTS
Eugenio CORNEJO FULLER
Prat 827, Piso 12, Casilla 75, Valparaiso, Chile
Fax: +56 32 252.622.

Nicholas J. HEALY
c/o Healy & Baillie, LLP - 61 Broadway, New York, N.Y. 10006-2701 U.S.A.
Tel.: +1 212 943.3980 - Fax: +1 212 425.0131 - +1 917 522.1261 (home)
E-mail: reception@healy.com

Anatoly KOLODKIN
3a, B Koptevsky pr., 125319, Moscow, Russia
Tel.: +7 95 151.7588 - Fax: +7 95 152.0916 - E-mail: maritimelaw@smniip.ru

J. Niall MCGOVERN
23 Merlyn Park, Ballsbridge, Dublin 4, Ireland.
Tel. and Fax: (1) 269.1782.

Tsuneo OHTORI
6-2-9-503 Hongo, Bunkyo-ku, Tokyo 113, Japan.

Jan RAMBERG
Centralvägen 35, 18357 Täby, Sweden
Tel.: +46 8 756.6225/756.5458 - Fax: +46 8 756.2460 - E-mail: jan.ramberg@intralaw.se

José D. RAY
25 de Mayo 489, 5th fl., 1339 Buenos Aires, Argentina
Tel.: +54 11 4311.3011 - Fax: +54 11 4313.7765 - E-mail: jdray@ciudad.com.ar

Hisashi TANIKAWA
c/o Japan Energy Law Institute
Tanakayama Bldg., 7F, 4-1-20 Toranomon Minato-ku, Tokyo 105-0001, Japan.
Tel.: +81 3 3434.7701 - Fax: +81 3 3434.7703 - E-mail: y-okuma@jeli.gr.jp

William TETLEY
McGill University, 3644 Peel Street, Montreal, Quebec H3A 1W9, Canada
Tel.: +1 514 398.6619 (Office) +1 514 733.8049 (home) - Fax: +1 514 398.4659
E-mail: william.tetley@mcgill.ca - Website: http://tetley.law.mcgill.ca
FUNCTIONS  
FONCTIONS

Audit Committee  
W. David ANGUS, Chairman  
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Nigel FRAWLEY  
Karl-Johan GOMBRII

Liaison with International Organizations  
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Patrick GRIGGS  
Alexander VON ZIEGLER 
Karl-Johan GOMBRII

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South America & Caribbean  
Stuart HETHERINGTON, Australasia 
Henry LI, Far East  
John E. HARE, Africa, Middle East & Indian Subcontinent  
Gregory TIMAGENIS, Europe (part)  
Christopher DAVIS, North, Central & South America, Caribbean (English Speaking)  
Justice Johanne GAUTHIER, Caribbean (French speaking)  
José-Maria ALCANTARA, South America & Caribbean (Spanish speaking) and Europe (part)

CMI Archives  
Francesco BERLINGIERI, Chairman  
Frank L. WISWALL, Jr.  
Wim FRANSEN  
Benoit GOEMANS

Nominating Committee  
Bent NIELSEN, Chairman  
Jean-Serge ROHART  
Patrick GRIGGS  
Zengjie ZHU  
Alexander VON ZIEGLER

Collection of outstanding contributions  
Karl-Johan GOMBRII, Chairman  
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Benoit GOEMANS

Planning Committee  
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Conferences, Seminars, etc.  
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Justice Johanne GAUTHIER  
Wim FRANSEN  
Nigel FRAWLEY  
Stuart HETHERINGTON  
José Maria ALCANTARA  
Gregory TIMAGENIS

Publications and Funding  
Francesco BERLINGIERI  
Wim FRANSEN  
Benoit GOEMANS  
John E. HARE  
Stuart HETHERINGTON  
Frank L. WISWALL, Jr.

Constitution Committee  
Frank L. WISWALL, Jr., Chairman  
Benoit GOEMANS  
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Nigel FRAWLEY  
Wim FRANSEN

Young CMI  
José Maria ALCANTARA, Chairman  
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INTERNATIONAL SUB-COMMITTEES

General Average Interest
Bent NIELSEN, Chairman
Patrick GRIGGS
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Michael STURLEY, Rapporteur

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Michael STOCKWOOD

Wreck Removal
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Patrick GRIGGS
Richard SHAW

INTERNATIONAL WORKING GROUPS

Fair Treatment of Seafarers in the Event of a Maritime Accident
David HEBDEN, Chairman
Michael CHALOS
Edgar GOLD
Linda HOWLETT
Kim JEFFERIES (Gard)
P.J. MUKHERJEE

Promotion of Quality Shipping
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Salvage Convention 1989
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Ship Recycling
José Maria ALCANTARA, Chairman
Nigel FRAWLEY
Michael STOCKWOOD

Maritime Criminal Acts
Frank L. WISWALL, Jr., Chairman

Wreck Removal
Bent NIELSEN, Chairman
Patrick GRIGGS
Richard SHAW

Implementation and Interpretation of International Conventions
Francesco BERLINGIERI, Chairman
Gregory TIMAGENIS, Deputy Chairman
Richard SHAW, Rapporteur
## Addresses

<table>
<thead>
<tr>
<th>Name</th>
<th>Address Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>José M. ALCANTARA</td>
<td>C/o Amya, C/Princesa, 61, 5°, 28008 Madrid, Spain, Tel.: +34 91 548.8328, Fax: +34 91 548.8256, E-mail: <a href="mailto:jmalcantara@amya.es">jmalcantara@amya.es</a></td>
</tr>
<tr>
<td>W. David ANGUS</td>
<td>C/o Stikman Elliot, 1155 René-Lévesque Blvd., Suite 4000, Montreal, Quebec, H3B 3V2 Canada, Tel: +1 514 397.3127, Fax: +1 514 397.3208, E-mail: <a href="mailto:dangus@stikeman.com">dangus@stikeman.com</a></td>
</tr>
<tr>
<td>Stuart BEARE</td>
<td>24, Ripplevale Grove, London N1 1HU, United Kingdom, Tel: +44 20 7609.0766, E-mail: <a href="mailto:stuart.beare@btinternet.com">stuart.beare@btinternet.com</a></td>
</tr>
<tr>
<td>Francesco BERLINGIERI</td>
<td>10 Via Roma, I-16121 Genova, Italia, Tel: +39 010 586.441, Fax: +39 010 594.805, E-mail: <a href="mailto:slb@dirmar.it">slb@dirmar.it</a></td>
</tr>
<tr>
<td>Wim FRANSEN</td>
<td>Everdijstraat 43, 2000 Antwerpen, Belgium, Tel.: +32 3 203.4500, Fax: +32 3 203.4501, E-mail: <a href="mailto:wimfransen@fransenadvocaten.com">wimfransen@fransenadvocaten.com</a></td>
</tr>
<tr>
<td>Nigel FRAWLEY</td>
<td>107A Cottingham St., Toronto, Ontario M4V 1B9, Canada, Tel.: home +1 416 923.0333, cottage +1 518 962.4587, Fax: +1 416 944.9020, E-mail: <a href="mailto:nhfrawley@earthlink.net">nhfrawley@earthlink.net</a></td>
</tr>
<tr>
<td>Justice Johanne GAUTHIER</td>
<td>Federal Court of Canada, Trial Division, 90 Sparks Street, 11th Floor, Ottawa, Ont. K1A OH9, Canada, Tel: +1 613 995.1268, E-mail: <a href="mailto:j.gauthier@fct-cf.gc.ca">j.gauthier@fct-cf.gc.ca</a></td>
</tr>
<tr>
<td>Benoit GOEMANS</td>
<td>Goemans, De Scheemaeker Advocaten, Ellermanstraat 46, Antwerp B-2060 Belgium, Tel.: +32 3 231.1331, Direct: +32 3 231.5436, Fax: +32 3 231.1333, E-mail: <a href="mailto:benoit.goemans@GDSadvocaten.be">benoit.goemans@GDSadvocaten.be</a></td>
</tr>
<tr>
<td>Charles GOLDIE</td>
<td>2 Myddylton Place, Saffron Walden, Essex CB10 1BB, United Kingdom, Tel: +44 1799 521.417, Fax: +44 1799 520.387, E-mail: <a href="mailto:charlesgoldie@nascr.net">charlesgoldie@nascr.net</a></td>
</tr>
<tr>
<td>Karl-Johan GOMBRII</td>
<td>Nordisk Defence Club, Kristinelundveien 22, P.O.Box 3033 Elisenberg, N-0207 Oslo, Norway, Tel.: +47 22 13.5600, Fax: +44 1799 520.387, E-mail: <a href="mailto:kjgombrii@nordisk.no">kjgombrii@nordisk.no</a></td>
</tr>
</tbody>
</table>
Addresses

Patrick GRIGGS  
C/o Ince & Co.  
International House, 1 St. Katharine’s Way  
London E1W 1UN, United Kingdom  
Tel: +44 20 7623.2011  
Fax: +44 20 7623.3225  
E-mail: p.griggs@incelaw.com

José Tomás GUzman SALCEDO  
Hendaya 60, Oficina 503,  
Zip Code: 7550188 Santiago, Chile  
Tel. +56 2 3315860/61/62/63  
Fax: +56 2 3315811  
E-mail: jtomasguzman.s@tie.cl

John E. HARE  
Shipping Law Unit  
Faculty of Law  
University of Cape Town  
Private Bag, Rondebosch 7700,  
South Africa  
Tel: +27 21 650.2676  
Fax: +27 21 686.5111  
E-mail: shiplaw@iafrica.com

David HEBDEN  
“Meliora”  
Bowesden Lane  
Shorne, Kent DA12 3LA, United Kingdom  
Tel.: +44 0 1474.822591  
Mob.: +44 0 7785.588745  
E-mail: davidhebden@btinternet.com

Stuart HETHERINGTON  
Colin Biggers & Paisley  
Level 42, 2 Park Street  
SYDNEY, Australia.  
Tel.: +61 2 8281.4555  
Fax: +61 2 8281.4567  
E-mail: swh@cbp.com.au

John KIMBALL  
c/o Blank Rome LLP  
The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174-0202, U.S.A.  
Tel.: +1 212 885.5259  
Fax: +1 917 332.3730  
E-mail: JKimball@BlankRome.com

Henry H. LI  
Law School of Dalian  
Maritime University  
1 Linghai Road, Dalian, China  
Tel.: +86 411.8472.9316  
Fax: +86 411.8472.7749  
E-mail: szshenry@public.szptt.net.cn

Bent NIELSEN  
Kromann Reumert  
Sundkrogsade 5  
DK-2100 Copenhagen O, Denmark  
Tel: +45 70 121211  
Fax: +45 70 121311  
E-mail: bn@kromannreumert.com

Patrice REMBAUVILLE-NICOLLE  
4, rue de Castellane  
75008 Paris, France  
Tel.: +33 1 42.66.34.00  
Fax: +33 1 42.66.35.00  
E-mail: patrice.rembauville-nicolle@rbm21.com

Thomas REMÉ  
Kiefernweg 9,  
D-22880 Wedel, Deutschland  
Tel.: +49 4103.3988  
E-mail: tundereme@t-online.de

Jean-Serge ROHART  
15, Place du Général Catroux  
F-75017 Paris, France  
Tel: +33 1 46.22.51.73  
Fax: +33 1 47.66.06.37  
E-mail: js.rohart@villeneau.com

Richard SHAW  
Boldre Grange Cottage  
Boldre, Lymington  
Hampshire SO41 8PT, United Kingdom  
Tel: +44 1590 671159  
Fax: +44 20 82412611  
E-mail: rshaw@soton.ac.uk

Michael STOCKWOOD  
c/o Ince & Co.  
International House, 1 St. Katharine’s Way  
London E1W 1UN, United Kingdom  
Tel: +44 20 7481.0010  
Fax: +44 20 7481.4968  
E-mail: michael.stockwood@incelaw.com

Michael STURLEY  
School of Law  
The University of Texas at Austin  
727 East Dean Keaton Street  
Austin, Texas 78705-3299, U.S.A.  
Tel: +1 512 232.1350  
Fax: +1 512 471.6988  
E-mail: msturley@mail.law.utexas.edu
Addresses

Gregory J. TIMAGENIS
57, Notara Street
GR-18535 Piraeus, Greece
Tel: +30 210 422.0001
Fax: +30 210 422.1388
E-mail: gjt@timagenislaw.com

Eric VAN HOOYDONK
E. Banningstraat 23
2000 Antwerpen, Belgium
Tel: +32 3 220.41.47
Fax: +32 3 248.88.63
E-mail: eric.vanhooydonk@skynet.be

Alexander VON ZIEGLER
Postfach 6333
Löwenstrasse 19
CH-8023 Zürich, Switzerland
Tel: +41 1 215.5252
Fax: +41 1 215.5200
E-mail: alexander.vonziegler@swlegal.ch

Trine Lise WILHELMSEN
Nordisk Inst. for Sjørett Universitethet
Karl Johans gt. 47, 0162 Oslo, Norway
Tel.: +47 22 85 97 51
Fax: +47 22 85 97 50
E-mail: t.l.wilhelmsen@jus.uio.no

Frank L. WISWALL JR.
Meadow Farm
851 Castine Road
Castine, Maine 04421-0201, U.S.A.
Tel: +1 207 326.9460
Fax: +1 202 572.8279
E-mail: FLW@Silver-Oar.com

Zengjie ZHU
China Ocean Shipping Company
Floor 12, Ocean Plaza,
158 Fuxingmennei Street
Xicheng District
Beijing 100031, China
Tel: +86 10 6649.2972/6764.1018
Fax: +86 10 6649.2288
E-mail: zhuzengjie@sina.com
MEMBER ASSOCIATIONS
ASSOCIATIONS MEMBRES

ARGENTINA
ASOCIACION ARGENTINA DE DERECHO MARITIMO
(Argentine Maritime Law Association)
c/o Dr. Alberto C. CAPPAGLI, Leandro N. Alem 928, 7th Floor
1001 Buenos Aires. Tel.: +54 11 4310.0100 – Fax: +54 11 4310.0200
E-mail: ACC@marval.com.ar

Established: 1905

Officers:

President: Dr. Alberto C. CAPPAGLI, Leandro N. Alem 928, 7th Floor, 1001 Buenos Aires.
Tel.: +54 11 4310.0100 - Fax: +54 11 4310.0200 – E-mail: ACC@marval.com.ar

Honorary President: Dr. José Domingo RAY, 25 de Mayo 489, 5th Floor, 1002 Buenos Aires.
Tel.: +54 11 4311.3011 - Fax: +54 11 4313.7765 – E-mail: jdray@ciudad.com.ar

Vice-President: Dr. Domingo M. LOPEZ SAAVEDRA, San Martin 662 4º Floor, 1004 Buenos Aires.
Tel.: +54 11 4515.0040/1224/1235 – Fax: +54 11 4515.0060/0022 –
E-mail: domingos@lsa-abogados.com.ar

Secretary General: Dr. Carlos R. LESMI, Lavalle 421 – 1st Floor, 1047 Buenos Aires.
Tel.: +54 11 4393.5292/5393/5991 – Fax: +54 11 4393-5889 –
Firm E-mail: lesmiymoreno@fibertel.com.ar – Private E-mail: clesmi@fibertel.com.ar

Assistant Secretary: Dr. Jorge M. RADOVICH, Corrientes 545, 6th Floor, 1043 Buenos Aires.
Tel.: +54 11 4328.2299 - Fax: +54 11 4394.8773 - Firm E-mail: sealaw@infovia.com.ar –
Private E-mail: jradovich@sealaw.com.ar

Treasurer: Mr. Pedro G. BROWNE, Lavalle 381, 5th Floor, 1047 Buenos Aires.
Tel.: +54 11 4314.4242 – Fax: +54 11 4314.0685 – E-mail: peterbrowne@browne.com.ar

Assistant Treasurer: Dr. Diego Esteban CHAMI, Libertad 567, 4th Floor, 1012 Buenos Aires.
Tel. +54 11 4382.4060/2828 – Fax: +54 11 4382.4243 –
E-mail: diego@chami-dimenna.com.ar

Members: Dr. Abraham AUERLIC, Dr. Fernando ROMERO CARRANZA, Dra. Susana TALAVERA

Titular Members:

Dr. Jorge BENGZLEA ZAPATA, Dr. Alberto C. CAPPAGLI, Dr. Diego CHAMI, Dr. Fernando ROMERO CARRANZA, Dr. Carlos R. LESMI, Dr. Domingo Martin LOPEZ SAAVEDRA, Dr. Marcial J. MENDIZABAL, Dr. Jorge M. RADOVICH, Dr. José D. RAY, Dra. H. S. TALAVERA, Sr. Francisco WEIL
AUSTRALIA AND NEW ZEALAND

THE MARITIME LAW ASSOCIATION OF AUSTRALIA AND NEW ZEALAND
PO Box 12101 George Street, Brisbane QLD 4003, Australia
Tel.: +61 (0)7 3236.5001 – Fax: +61 (0)7 3236.3535
E-mail: admin@mlaanz.org – Website: www.mlaanz.org

Established: 1974

Officers:

President: Frazer HUNT, Piper Alderman, Level 23, Governor Macquarie Tower 1, Farrar Place, Sydney NSW 2000. Tel.: +61 2 9253.9984 – Fax: +61 2 9253.9900 – E-mail: vpaust@mlaanz.org

Australian Vice-President: Sarah DERRINGTON, T C Beirne Law School, University of Queensland, St. Lucia QLD 4171, Australia. Tel.: +61 7 3365.3320 – Fax: +61 7 3365.1466 – E-mail: treasurer@mlaanz.org

New Zealand Vice President: Philip RZEPECKY, PO Box 105221, Auckland, New Zealand. Tel.: +64 9 379.9040 – Fax: +64 9 379.8535 – E-mail: vpnz@mlaanz.org

Secretary: Stephen THOMPSON, Middletons, Level 26, Australia Square, 264 George Street, Sydney NSW 2000, Australia. Tel.: +61 2 9390.8278 – Fax: +61 2 9247.2866 – E-mail: assistsec@mlaanz.org

Treasurer: Michelle TAYLOR, Senior Associate Phillips Fox, 1 Eagle Street, Brisbane 4000. Tel. +61 7 3246.4131 – Fax: +61 7 3229.4077 – E-mail: michelle.taylor@phillipsfox.com

Immediate Past-President: John FARQUHARSON, Phillips Fox, The Quadrant, 1 William Street, Perth WA 6000, Australia. Tel.: +61 8 9288.6758 – Fax: +61 8 9288.6001 – E-mail: president@mlaanz.org

Titular Members:


Membership:

490
PART I - ORGANIZATION OF THE CMI

BELGIUM

ASSOCIATION BELGE DE DROIT MARITIME
BELGISCHE VERENIGING VOOR ZEERECHT
(Belgian Maritime Law Association)
c/o Henry Voet-Genicot, Mr. Henri Voet Jr.,
Kipdorp, 53, 2000 Antwerpen
Tel.: +32 3 218.7464 – Fax: +32 3 218.6721

Established: 1896

Officers:

President: Herman LANGE, Schermerstraat 30, 2000 Antwerpen, Belgium. Tel.: +32 3 203.4310 – Fax: +32 3 203.4318 – E-mail: h.lange@lange-law.be
Past President: Wim FRANSEN, Everdijstraat 43, 2000 Antwerpen, Belgium. Tel.: +32 3 203.4500 – Fax: +32 3 203.4501 – E-mail: wimfransen@fransenadvocaten.com
Vice-Presidents:
Luc KEYZER, De Burburestraat 6-8, 2000 Antwerpen, Belgium. Tel.: +32 3 237.0101 – Fax: +32 3 237.0324 – E-mail: roosendaal.keyzer@roosendaal.keyzer.be
Guy VAN DOOSSELAERE, Lange Gasthuisstraat 27, 2000 Antwerpen, Belgium. Tel.: +32 3 232.1785 – Fax: +32 3 225.2881 – E-mail: guyvandoosselaere@vandoosselaere.be
Secretary: Henri VOET Jr., Kipdorp, 53, 2000 Antwerpen, Belgium. Tel. +32 3 218.7464 – Fax: +32 3 218.6721
Treasurer: Adry POELMANS, Lange Gasthuisstraat 27, 2000 Antwerpen, Belgium. Tel. +32 3 203.4000 – Fax: +32 3 225.2881

Members of the General Council:
Henri BOSMANS, Emmanuel COENS, Jean-Pierre DE COOMAN, Stephane DECKERS, Christian DIERYCK, Guy HUYGHE, Jacques LIBOUTON, Frans PONET, Frank STEVENS, Ingrid VAN CLEMEN

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BRAZIL

ASSOCIAÇÃO BRASILEIRA DE DIREITO MARITIMO
(Brazilian Maritime Law Association)
Rua Mexico, 111 Sala 501
Rio de Janeiro – 20031-45 RJ – Brasil
Tel.: +55 212220.4488/2524.2119 – Fax: +55 212524.2166

Established: 1924

Officers:

President: Dr. Artur Raimundo CARBONE, Escritório Jurídico Carbone – Av. Rio Branco, 99 – 4th floor, Rio de Janeiro, CEP 20040-004 RJ-Brasil. Tel.: +55 212253.3464 – Fax: +55 212253.0622 – E-mail: ejc@carbone.com.br
Vice-Presidents:
Dr. Theôphilo DE AZEREDO SANTOS, Av. Atlantica, 2016/5th floor, Rio de Janeiro, RJ, CEP 22.021-001. Tel.: +55 212203.2188/2255.2134
Dr. Celso D. ALBUQUERQUE MELLO, Rua Rodolfo Dantas, 40/1002, Rio de Janeiro, RJ, CEP 22.020.040. Tel.: +55 212542.2854
Dr. Luiz Carlos DE ARAUJO SALVIANO, Judge of Brazilian Maritime Court, Rua Conde de Bonfim, 496/502, Rio de Janeiro, RJ, CEP 20.520-054. Tel.: +55 212253.6324 / 2208.6226
Dr. Dêlio MAURY, Rua Teófilo Otoni, 4/2nd floor, Rio de Janeiro, RJ, CEP 20090-070. Tel.: +55 213870-5411/3870-5679
Secretary General: Mr. José SPANGENBERG CHAVES

Titulary Members:
Pedro CALMON FILHO, Artur R. CARBONE, Maria Cristina DE OLIVEIRA PADILHA, Walter de SA LEITÃO, Rucemah Leonardo GOMES PEREIRA, Artur R. CARBONE

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PART I - ORGANIZATION OF THE CMI

Member Associations

BULGARIA

BULGARIAN MARITIME LAW ASSOCIATION
5 Major Yuriy Gagarin Street, Bl. n° 9, Entr. B, 1113 Sofia
Tel.: +359 2 721590

Officers:

President: Prof. Ivan VLADIMIROV
Secretary & Treasurer: Diana MARINOV
Members: Ana DJUMALIEVA, Anton GROZDANOV, Valentina MARINOV, Vesela TOMOVA, Neli HALACHEVA, Ruben NICOLOV and Svetoslav LAZAROV

CANADA

CANADIAN MARITIME LAW ASSOCIATION
L’ASSOCIATION CANADIENNE DE DROIT MARITIME

PO Box 997 – 900-1959 Upper Water Street – Halifax, NS CANADA B3J 2X2
Attention: A. William Moreira, Q.C.
E-mail: wmoreira@smss.com

Established: 1951

Officers:

President: A. William MOREIRA, Q.C., Stewart McKelvey Stirling Scales, PO Box 997, 900-1959 Upper Water Street, Halifax, NS B3J 2X2. Tel.: +1 902 420.3346 – Fax: +1 902 420.1417 – E-mail: wmoreira@smss.com
Immediate Past President: Peter J. CULLEN, Stikeman Elliott, 1155 René-Lévesque Blvd. West, 40th Floor, Montreal, QC H3B 3V2. Tel.: +1 514 397.3135 – Fax: +1 514 397.3412
E-mail: pcullen@stikeman.com
National Vice President: Michael J. BIRD, Bull, Housser & Tupper, 3000-1055 West Georgia Street, Vancouver BC V6E 3R3. Tel.: +1 604 641.4970 – Fax: +1 604 646.2641 – E-mail: mjbird@bht.com
Secretary and Treasurer: A.H.E. POPP, Q.C., 594 Highland Avenue, Ottawa, ON H2A 2K1. Tel.: +1 416 729.4650 – E-mail: poppa@igs.net
Vice President West: Christopher J. GIASCHI, Giaschi & Margolis, 404-815 Hornby Street, Vancouver, BC V6Z 2E6. Tel.: +1 604 681.2866 – Fax: +1 604 684.2501 – E-mail: giaschi@AdmiraltyLaw.com
Vice President Central: George R. STRATHY, Strathy & Associates, 24 Duncan Street, Toronto, ON M5V 2B6. Tel.: +1 416 601.6805 – Fax: +1 514 601.1190 – E-mail: george@strathyaandassociates.com
Vice President Quebec: John G. O’CONNOR, Langlois Gaudreau O’Connor, 801 Chemin St-Louis, Suite 300, Québec, QC G1S 1C1. Tel.: +1 418 682.1212 – Fax: +1 418 682.2272 – E-mail: john.oconnor@lkd.ca
Vice President East: M. Robert JETTÉ, Q.C., Clark Drummie, 40 Wellington Row, Saint John, NB E2L 4S3. Tel.: +1 506 633.3824 – Fax: +1 506 633.3811 – E-mail: mrj@clark-drummie.com
Member Associations

**Directors:**

Brad M. CALDWELL, Caldwell & Co., 401-815 Hornby Street, Vancouver, BC V6Z 2E6. Tel.: +1 604 689.8894 – Fax: +1 604 689.1865 – E-mail: bcaldwell@admiraltylaw.com

Richard L. DESGAGNES, Ogilvy Renault, 1981 McGill College Avenue, Suite 1100, Montréal, QC H3A 3C1. Tel.: +1 514 847.4431 – Fax: +1 514 286.5474 – E-mail: rdesgagnes@ogilvyrenault.com

Danièle DION, Brisset Bishop s.e.n.c., 2020 University Street, Suite 444, Montréal, QC H3A 2A5. Tel.: +1 514 393.3700 – Fax: +1 514 393.1211 – E-mail: danieledion@brissetbishop.com

Rui M. FERNANDES, Fernandes Hearn LLP, 335 Bay Street, Suite 601, Toronto, ON M5H 2R3. Tel.: +1 416 203.9505 – Fax: +1 416 203.9444 – E-mail: rui@fernandeshearn.com

Thomas S. HAWKINS, Bernard & Partners, 1500-570 Granville Street, Vancouver, BC V6C 3P1. Tel.: +1 604 661.0604 – Fax: +1 604 681.1788 – E-mail: hawkins@bernardpartners.com

Simon BARKER, Oland & CO., Toronto Office, 54 Dalecroft Circe, Unionville, ON L3R 6J8. Tel.: +1 905 947.0919 – E-mail: simonbarker@rogers.com

Douglas G. SCHMITT, Alexander Holburn Beaudin & Lang, Box 10057, Pacific Centre 2700-700 West Georgia St., Vancouver, BC V7Y 1B8. Tel.: +1 604 643.2460 – Fax: +1 604 669.7642 – E-mail: dschmitt@ahbl.ca

Richard F. SOUTHCOTT, Stewart McKelvey Stirling Scales, 900-1959 Upper Water Street, P.O. Box 997, Halifax, NS B3J 2X2. Tel.: +1 902 420.3304 – Fax: +1 902 420.1417 – E-mail: rsouthcott@smss.com

Wylie SPICER, Q.C., McLennan Cooper, Summit Place, 1601 Lower Water Street, P.O. Box 730, Halifax, NS B3J 2V1. Tel.: +1 902 424.1366 – Fax: +1 902 425.6350 – E-mail: wylie.spicer@mcinnescooper.com

Cecily Y. STRICKLAND, Stewart McKelvey Stirling Scales, Cabot Place, 100 New Gow-er Streete., P.O. Box 5038, St John’s, NL A1C 5V3. Tel.: +1 709 722.4270 – Fax: +1 709 722.4565 – E-mail: cstrickland@smss.com

**Representatives of Constituent Members:**

The Association of Maritime Arbitrators of Canada, c/o David G. COLFORD, Brisset Bishop s.e.n.c., 2020 University Street, Suite 444, Montreal, QC H3A 2A5. Tel.: +1 514 393.3700 – Fax: +1 514 393.1211 – E-mail: davidcolford@brissetbishop.com

The Canadian Board of Marine Underwriters, c/o Mr. Doug MCRAE, AXA Insurance (Canada), 2020 University Street, Suite 600, Montréal, QC H3A 2A5. Tel.: +1 514 392.6033 (ext. 4222) – Fax: +1 514 392.7392 – E-mail: douglas.mcrae@axa-assurances.ca

Canadian International Freight Forwarders Association, c/o Mr. Peter F.M. JONES, Paterson MacDougall, One Queen Street East, Suite 2100, Box 100, Toronto, ON M5C 2W5. Tel.: +1 416 643.3323 – Fax: +1 416 366.3743 – E-mail: pfmjones@pmlaw.com

Canadian Petroleum Products Institute, c/o Mr. Kieran SHANAHAN, Apartment 1123E, 4300 de maisonneuve Ave West, Westmount QC H3Z 1K8. Tel.: +1 514 932.0900 – Fax: +1 514 932.7486 – E-mail: kjshanahan@sympatico.ca

The Canadian Shipowners Association, c/o Mr. Donald N. MORRISON, 350 Sparks Street, Suite 705, Ottawa, ON K1R 7S8. Tel.: +1 613 232.3539 – Fax: +1 613 232.6211 – E-mail: morrison@shipowners.ca

Chamber of Shipping of British Columbia, c/o Mr. Rick BRYANT, P.O. Box 12105, 100-1111 West Hastings Street, Vancouver, BC V6E 2J3. Tel.: +1 604 681.2351 – Fax: +1 604 681.4364 – E-mail: rick@chamber-of-shipping.com

The Shipping Federation of Canada, c/o Ms. Anne LEGARS, 300 rue du Saint Sacrement, Suite 326, Montreal, QC H2Y 1X4. Tel.: +1 514 849.2325 – Fax: +1 514 849.6992 – E-mail: alegars@shipfed.ca
**PART I - ORGANIZATION OF THE CMI**

**Member Associations**

_Honorary Life Members:_

**Titulary Members:**

---

**CHILE**

**ASOCIACION CHILENA DE DERECHO MARITIMO**
_(Chilean Association of Maritime Law)_
Prat 827, Piso 12, Casilla 75, Valparaíso
Tel.: +56 32 252535/213494/254862 – Fax: +56 32 252622
E-mail: corsanfi@entelchile.net

_Established: 1965_

**Officers:**

**President:** Eugenio CORNEJO LACROIX, Lawyer, Average Adjuster and Professor of Maritime Law and Insurance, c/c Cornejo, San Martin & Figari, Hendaya 60. Of. 503, Santiago, Chile. – Tel.: +56 2 3315860/3315861/3315862/3315863 – Fax: +56 2 3315811
E-mail: eugenio.cornejo@tie.cl

**Vice-President:** Ricardo SAN MARTIN PADOVANI, Prat 827, Piso 12, Valparaíso.
Tel.: +56 32 252535/213494/254862 – Fax: +56 32 252622 – E-mail: rsm@entelchile.net

**Secretary:** Jose Manuel ZAPICO MACKAY, Cochrane 667, Of. 606, Valparaíso.
Tel.: +56 32 215816/221755 – Fax: +56 32 251671 – E-mail: josezapico@mackaylaw.cl

**Treasurer:** don Eugenio CORNEJO FULLER, Prat 827, Piso 12, Casilla 75, Valparaíso – Tel.: +56 32 252535/213494/254862 – Fax: +56 32 252.622
E-mail: eugenio.cornejo@entelchile.net

**Member:** José Tomás GUZMAN SALCEDO, Hendaya 60. Of. 503, Zip Code 7550188 Santiago, Chile. – Tel.: +56 2 3315860/61/62/63 – Fax: +56 2 3315811
E-mail: jtomasguzman.s@tie.cl

**Titulary Members:**
don Eugenio CORNEJO FULLER, don José Tomás GUZMAN SALCEDO, don Eugenio CORNEJO LACROIX, don Ricardo SAN MARTIN PADOVANI y don Maximiliano GENSKOWSKY MOGGIA.
CHINA MARITIME LAW ASSOCIATION
6/F Golden Land Building,
No. 32, Liang Ma Qiao Road,
Chaoyang District, BEIJING 100016, CHINA
Tel.: +86 10 6462.4004, 6460.4040 – Fax: +86 10 6464.3500
E-mail: info@cmla.org.cn – Website: www.cmla.org.cn

Established: 1988

Officers:

President: Wenjie LIU, Vice-President of China Council for the Promotion of International Trade, No. 1 Fuxingmenwai Street, Beijing, 100860, China. Tel.: +86 10 68013344 – Fax: +86 10 68011370

Vice-Presidents:
Shengchang WANG, Secretary General of China International Economic and Trade Arbitration Commission, 6/F Golden Land Building, No. 32 Liangmaqiao Rd., Chaoyang District, Beijing, 100016, China. Tel.: +86 10 64646688 – Fax: +86 10 64643500
Yanjun WANG, Deputy Chief of the Fourth Civil Affairs Court, Supreme People’s Court of P.R.C., No. 27 Dong Jiao Min Xiang, Beijing, 100745, China. Tel.: +86 10 65299624 – Fax: +86 10 65120831
Futian WANG, Vice-President of China Ocean Shipping (Group) Company, COSCO Building, No. 158 Fuxingmennei Street, Beijing, 100031, China. Tel.: +86 10 66492573 – Fax: +86 10 66083792
Zongze GAO, Chairman of All-China Lawyers’ Association, Qinglan Mansion, No. 24 Dong Si Shi Tiao, Beijing, 100007, China. Tel.: +86 10 84020232 – Fax: +86 10 84020232
Linchun KE, Deputy Director of Department of System Reform & Legislation, Ministry of Communications of P.R.C., No. 11 Jianguomennei Street, Beijing, 100736, China. Tel.: +86 10 65292601 – Fax: +86 10 65261596
Jianwei ZHANG, Vice-President of China National Foreign Trade Transportation Corporation, Jinyun Tower A, No.43a Xizihimenbei Street, Beijing, 100044, China. Tel.: +86 10 62295999 – Fax: +86 10 62295998
Shicheng YU, Professor of Shanghai Maritime University, No. 1550 Pu Dong Dadao, Shanghai, 200135, China. Tel.: +86 21 58207399 – Fax: +86 21 58204719
Yuzhuo SI, Professor of Dalian Maritime University, Post Box 501, Building 113, Dalian Maritime University, Dalian, 116026, China. Tel.: +86 411 4671338 – Fax: +86 411 4671338
Yuquan LI, Vice-President of the People’s Insurance Company of China, No. 69 Dongheyan Street, Xuanwu District, Beijing, 100052, China. Tel.: +86 10 63035017 – Fax: +86 10 63033734

Secretary General: Min CHEN, Deputy Secretary-General of China International Economic and Trade Arbitration Commission, 6/F Golden Land Building, No. 32 Liangmaqiao Rd., Chaoyang District, Beijing, 100016, China. Tel.: +86 10 64646688 – Fax: +86 10 64643500

Deputy Secretaries General:
Ilong JIANG (Ms.), China Maritime Arbitration Commission, 6/F Golden Land Building, No. 32 Liangmaqiao Rd., Chaoyang District, Beijing, 100016, China. Tel.: +86 10 64646688 – Fax: +86 10 64643500
Jinxian ZHANG, Judge of the Fourth Civil Affairs Court, Supreme People’s Court of P.R.C., No. 27 Dong Jiao Min Xiang, Beijing, 100745, China. Tel.: +86 10 65299638 – Fax: +86 10 65120831
PART I - ORGANIZATION OF THE CMI

Member Associations

Keqing IIUANG, Division Chief of Department of System Reform & Legislation, Ministry of Communications of P.R.C., No. 11 Jianguomennei Street, Beijing, 100736, China. Tel.: +86 10 65292601 – Fax: +86 10 65261596

Hong LIANG (Ms.), Director of Legal Department of China Ocean Shipping (Group) Company, COSCO Building, No. 158 Fuxingmennei Street, Beijing, 100031, China. Tel.: +86 10 66492573 – Fax: +86 10 66083792

Yuqun MENG, General Legal Counselor of China National Foreign Trade Transportation Corporation, Jinyun Tower A, No. 43a Xizhimenbei Street, Beijing, 100044, China. Tel.: +86 10 62295999 – Fax: +86 10 62295998

Zhihong ZOU, Division Chief of Legal Department of the People’s Property Insurance Company of China, No. 69 Dongheyuan Street, Xuanwu District, Beijing, 100052, China. Tel.: +86 10 63035017 – Fax: +86 10 63033734

Dihuang SONG, Partner of Commerce & Finance Law Office, Room 714, Huapu Mansion, No. 19 Chaowai Street, Beijing, 100020, China. Tel.: +86 10 65802255 – Fax: +86 10 65802678

COLOMBIA

ASOCIACION COLOMBIANA DE DERECHO Y ESTUDIOS MARITIMOS
“ACOLDEMAR”
Carrera 7 No. 24-89 Oficina 1803
P.O. Box 14590
Bogotà, D.C. Colombia, South America
Tel. +57 1 241.0473/241.0475 – Fax: +57 1 241.0474

Established: 1980

Officers:

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Vice-President: Dr. Jaime CANAL RIVAS
Secretary: Dr. Marcelo ALVEAR ARAGON
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COSTA RICA

ASOCIACION INSTITUTO DE DERECHO MARITIMO DE COSTA RICA
(Maritime Law Association of Costa Rica)
Oficentro Torres del Campo, Edificio I, Segundo Nivel, San José, Costa Rica
Tel.: +506 257.2929 – Fax: +506 248.2021

Established: 1981

Officers:
President: Lic.Tomas Federico NASSAR PEREZ, Abogado y Notario Publico, Apartado Postal 784, 1000 San José
Vice-President: Licda. Roxana SALAS CAMBRONERO, Abogado y Notario Publico, Apartado Postal 1019, 1000 San José
Secretary: Lic. Luis Fernando CORONADO SALAZAR
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CROATIA

HRVATSKO DRUŠTVO ZA POMORSKO PRAVO
(Croatian Maritime Law Association)
c/o Rijeka College Faculty of Maritime Studies,
Studentska 2, 51000 RIJEKA, Croatia
Tel.: +385 51 338.411 – Fax: +385 51 336.755
E-mail: hdpp@pfri.hr – Website: http://www.pfri.hr/hdpp

Established: 1991

Officers:
President: Dr. sc. Petar KRAGIĆ, Legal Counsel of Tankerska plovidba d.d., B. Petranovića 4, 23000 Zadar. Tel. +385 23 202-261 – Fax: +385 23 250.501 – E-mail: petar.kragic@tankerska.hr
Past President: Prof. dr. sc. Velimir FILIPOVIĆ, Professor of Maritime and Transport Law at the University of Zagreb Faculty of Law, Trg. Marsala Tita 14, 10000 Zagreb. Tel.: +385 1 485.5848 – Fax: +385 1 485.5828 – E-mail: vfilipov@pravo.hr
Vice-Presidents:
Prof. dr. sc. Dragan BOLANČA, Professor of Maritime Law at the University of Split Faculty of Law, Domovinskog rata 8, 21000 Split. Tel.: +385 21 393.518 – Fax: +385 21 393.597 – E-mail: dbolanca@pravst.hr
Prof. dr. sc. Aleksandar BRAVAR, Associate Professor of Maritime and Transport Law at the University of Zagreb Faculty of Law, Trg Marsala Tita 14, 10000 Zagreb. Tel.: +385 1 480-2417 – Fax: +385 1 480-2421 – E-mail: abravar@pravo.hr
Dr. sc. Vesna TOMLJENOVIC, Assistant Professor of Private International Law at the University of Rijeka Faculty of Law, Hahlich 6, 51000 Rijeka. Tel.: +385 51 359.684 – Fax: +385 51 359.593 – E-mail: vesnat@pravri.hr
PART I - ORGANIZATION OF THE CMI

Member Associations

Secretary General: Mr. Igor VIO, LL.M., Lecturer at the University of Rijeka Faculty of Maritime Studies, Studentska 2, 51000 Rijeka. Tel. +385 51 338.411 – Fax: +385 51 336.755 – E-mail: vio@pfri.hr

Administrators:
Dr. sc. Dora CORIĆ, Assistant Professor of Maritime and Transport Law at the University of Rijeka Faculty of Law, Hahlić 6, 51000 Rijeka. Tel.: +385 51 359-534 – Fax: +385 51 359-593 – E-mail: dcoric@pravri.hr

Mrs. Sandra DEBELJAK-RUKAVINA, LL.M, Research Assistant at the University of Rijeka Faculty of Law, Hahlić 6, 51000 Rijeka. Tel.: +385 51 359.533 – Fax: +385 51 359.593 – E-mail: rukavina@pravri.hr

Treasurer: Mrs. Marija POSPIŠIL-MILER, LL.M., Legal Counsel of Lošinjska plodivba-Brodarstvo d.d., Splitska 2, 51000 Rijeka. Tel.: +385 51 319.015 – Fax: +385 51 319.003 – E-mail: legal@losinjska-plodivba.hr

Titular Members:
Velimir FILIPOVIĆ, Ivo GRABOVAC, Vinko HLAČA, Hrvoje KAČIĆ, Petar KRAJIĆ, Mrs. Ljerka MINTAS-HODAK, Drago PAVIĆ.

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DENMARK

DANSK SORETSFORENING
(Danish Branch of Comité Maritime International)
c/o Gorrissen Federspiel Kierkegaard
12 H.C. Andersens Boulevard DK-1553 Copenhagen V, Denmark
Tel.: +45 33 41.41.41 – Fax: +45 33 41.41.33
E-mail: al@gfklaw.dk

Established: 1899

Officers:
President: Alex LAUDRUP c/o Gorrissen Federspiel Kierkegaard, H.C. Andersens Boulevard 12, 1553 Copenhagen V. Tel.: +45 33 41.41.41 – Fax.: +45 33 41.41.33 – E-mail: al@gfklaw.dk

Members of the Board:
Anders ULRIK, Assuranceforeningen Skuld, Frederiksborngade 15, 1360 Copenhagen K, Denmark. Tel.: +45 33 43.34.00 – Fax: +45 33 11.33.41 – E-mail: anders.ulrik@skuld.com
Henrik THAL JANTZEN, Kromann Reumert, Sundkrogsgade 5, 2100 Copenhagen Ø, Denmark. Tel.: +45 70 12.12.11 – Fax: +45 70 12.13.11 – E-mail: hj@kromannreumert.com
Dorte ROLFF, A.P. Møller – Mærsk A/S, Esplanaden 50, 1098 Copenhagen K, Denmark. Tel.: +45 33 63.33.63 – Fax: +45 33 63.41.08 – E-mail: cphcomp@maersk.com
Jes ANKER MIKKELSEN, Bech-Bruun Dragsted, Langelinie Allé 35, 2100 Copenhagen Ø, Denmark. Tel.: +45 72 27.00.00 – Fax: +45 72 27.00.27 – E-mail: jes.anker.mikkelsen@bechbruundragsted.com
Michael VILLADSEN, Advokaterne, Aaboulevarden 11-13, P.O. Box 5081, 8100 Aarhus C, Denmark. Tel.: +45 86 12.19.99 – Fax: +45 86 12.19.25
E-mail: mv@aaboulevarden.dk
Uffe LIND RASMUSSEN, Danish Shipowners’ Association, Amaliegade 33, 1256 Copenhagen K, Denmark. Tel.: +45 33 11.40.88 – Fax: +45 33 11.62.10
E-mail: ulr@danmarksrederiforening.dk
Ole SPIERMANN, Jonas Bruun, Bredgade 38, 1260 Copenhagen K, Denmark. Tel.: +45 33 47.88.00 – Fax: +45 33 47.88.88 – E-mail: osp@jblaw.dk
Peter ARNT NIELSEN, Copenhagen Business School, Legal Department, Howitzvej 13, 2000 Frederiksberg C, Denmark. Tel.: +45 38 15.26.44 – Fax: +45 38 15.26.10 – E-mail: pan.jur@cbs.dk
Jens HENNILD, the Confederation of Danish Industries (DI), H.C. Andersens Boulevard 18, 1787 Copenhagen V, Denmark. Tel.: +45 33 77.33.77 – Fax: +45 33 77.33.00 – E-mail: jeh@di.dk

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DOMINICAN REPUBLIC
ASOCIACION DOMINICANA DE DERECHO MARITIMO (AADM)
557 Arzobispo Portes Street, Torre Montty, 3rd Floor, Ciudad Nueva, Santo Domingo, Dominican Republic
Tel.: +851 685.8988/682.2967 – Fax: +851 688.1687

Established: 1997

Officers:
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Secretary: Lic. Marie Linnette GARCIA CAMPOS
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ECUADOR

ASOCIACION ECUATORIANA DE ESTUDIOS Y DERECHO MARITIMO “ASEDMAR”
(Ecuadorian Association of Maritime Studies and Law)
Junin 105 and Malecón 2nd Floor, Intercambio Bldg.,
P.O.Box 3548, Guayaquil, Ecuador
Tel.: +593 4 570.700 – Fax: +593 4 570.200

Established: 1993

Officers:

President:
Ab. José M. APOLO, Junin 105 y Malecón 2do Piso, P.O.Box 3548, Guayaquil, Ecuador. Tel.: +593 4 320.713/4 – Fax: +593 4 322.751 – E-mail: apolo@margroup.com.ec

Vice President:
Dr. Fernando ALARCON, El Oro 101 y La Ria (Rio Guayas), Guayaquil, Ecuador. Tel.: +593 4 442.013/444.019

Vocales Principales:
Ab. Jaime MOLINARI, Av. 25 de Julio, Junto a las Bodegas de Almagro. Tel.: 435.402/435.134
Dr. Publio FARFAN, Elizalde 101 y Malecon (Asesoría Jurídica Digmer). Tel.: 324.254
Capt. Pablo BURGOS C., (Primera Zona Naval). Tel.: 341.238/345.317

Vocales Suplentes:
Dr. Manuel RODRIGUEZ, Amazonas 1188 y físcin, Piso 7º, Edificio Flope (Dir. Gen. Int. Marítimos) As. Jurídico. Tel.: +593 2 508.909/563.076

Titular Member

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FINLAND

SUOMEN MERIOIKEUSYHDISTYS
FINLANDS SJÖRÄTTSFÖRENING
(Finnish Maritime Law Association)
Åbo Akademi University, Department of Law,
Gezeliusgatan 2, FIN-20500 Åbo, Finland
Tel.: +358-2-215 4692 – Fax: +358-2-215 4699

Established: 1939

Officers:

President: Hannu HONKA, Åbo Akademi, Department of Law, Gezeliusgatan 2, FIN-20500 Åbo. Tel.: +358 2 215 4129 – Fax: +358 2 215 4699. E-mail: hannu.honka@abo.fi
Vice-President: Nils-Gustaf PALMGREN, Silja Oyj Abp, POB 659, FIN-00101 Helsingfors. Tel.: +358 9 6962 6316 – Fax: +358 9 628 797
Secretary: Peter SANDHOLM, Åbo Hovrätt, Tavastgatan 11, FIN-20500 Åbo. Tel.: +358 2 272 500 – Fax: +358 2 251 0575. E-mail: peter.sandholm@om.fi

Members of the Board:

Jan AMINOFF, Advokatbyrå Jan Aminoff, Fredsgatan 13 A, FIN-01700 Helsingfors. Tel.: +358 9 684 0 477 – Fax: +358 9 6840 4740
Lolan ERIKSSON, Kommunikationsministeriet, POB 235, FIN-00131 Helsingfors. Tel.: +358 9 1601
Henrik GAHMBERG, Advokatbyrå Gahmberg, Hästö & Co, POB 79, FIN-00131 Helsingfors. Tel.: +358 9 6869 8830 – Fax: +358 9 6869 8850
Jan HANSES, Viking Line Ab, Norragatan 4, FIN-22100 Mariehamn. Tel.: +358 18 27 000 – Fax: +358 18 12099
Ilkka KUUSNIEMI, Neptun Juridica Oy Ab, Bulevardi 1 A, FIN-00100 Helsinki. Tel.: +358 9 626 688 – Fax: +358 9 628 797
Olli KYTÖ, Alandia Bolagen, PB 121, FIN-22101 Mariehamn. Tel.: +358 18 29000 – Fax: +358 18 12290
Niklas LANGENSKJÖLD, Advokatbyrå Castrén & Snellman, PB 233, FIN-00131 Helsingfors. Tel.: +358 9 228 581 – Fax: +358 9 601 961
Heikki MUTTILAINEN, Merenkulkualliit, Vuorimiehenkatu 1, FIN-00140 Helsinki. Tel.: +358 9 0204 48 4203
Tapio NYSTRÖM, Vakuutus Oy Pohjola, Lapinmäentie 1, FIN-00013 Pohjola. Tel.: 010 559 90 – Fax: 010 559 5904
Antero PALAJA, Turun Hovioikeus, Hämeenkatu 11, FIN-20500 Turku. Tel.: +385 2 272 500 – Fax: +385 2 2510 575
Matti TEMMES, Oy Gard Services Ab, Bulevarden 46, FIN-00120 Helsingfors. Tel.: +358 9 6188 3410 – Fax: +358 9 6121 000
Peter WETTERSTEIN, Åbo Akademi, Department of Law, Gezeliusgatan 2, FIN-0500 Åbo. Tel.: +358 2 215 4321 – Fax: +358 2 2215 4699. E-mail: peter.wetterstein@abo.fi

Titular Member:

Nils-Gustaf PALMGREN

Membership:

Private persons: 97 - Firms: 31
Member Associations

FRANCE

ASSOCIATION FRANCAISE DU DROIT MARITIME
(French Maritime Law Association)
Correspondence to be addressed to
AFDM, 10, rue de Laborde – 75008 Paris
Tel.: +33 1 53.67.77.10 – Fax: +33 1 47.23.50.95
E-mail: facaff@club-internet.fr – website: www.afdm.asso.fr

Established: 1897

Officers:

Président: M. Antoine VIALARD, Professeur émérite de la Faculté de Droit de l’Université de Bordeaux. 20, Hameau de Russac Tel.: +33 5 56.84.85.58 – Fax: +33 5 56.81.41.09 – E-mail: avialard@numericable.fr

Présidents Honoraires:
M. Pierre LATRON, Fédération Française des Sociétés d’Assurances, Direction des Assurances Transport, 26, boulevard Haussmann, 75311 Paris Cedex 09. Tel.: +33 1 42.47.91.41 – Fax: +33 1 42.47.91.42

Prof. Pierre BONASSIES, Professeur (H) à la Faculté de Droit et de Science Politique d’Aix Marseille, 7, Terrasse St Jérôme, 8 avenue de la Cible, 13100 Aix-en-Provence. Tel.: +33 4 42.26.48.91 – Fax: +33 4 42.38.93.18

Me Jean-Serge ROHART, Avocat à la Cour de Paris, SCP Villeneau Rohart Simon & Associés, 15 Place du Général Catroux, 75017 Paris. Tel.: +33 1 46.22.51.73 – Fax: +33 1 47.66.03.37 – E-mail: js.rohart@villeneau.com

Mme Françoise MOUSSU-ODIER, Consultant Juridique, M.O. CONSEIL, 114, Rue du Bac, 75007 Paris. Tel./Fax: +33 1 42.22.23.21 – E-mail: f.odier@wanadoo.fr

Vice-Présidents:
M. Philippe BOISSON, Conseiller Juridique, Division Marine, Bureau Veritas, 17bis Place des Reflets – Cedex 44, 92077 Paris La Défense. Tel.: +33 1 42.91.52.71 – Fax: +33 1 42.91.52.98 – E-mail: philippe.boisson@bureauveritas.com

Mme Claude G. de LAPPARENT, Avocat Honoraire, 11, rue Massenet, 75116 PARIS. Tel./Fax: +33 1 47.23.68.41 – E-mail: jdlat@aol.com

Sécretaire Général: M. Patrick SIMON, Avocat à la Cour, Villeneau Rohart Simon & Associés, 15 Place du Général Catroux, 75017 Paris. Tel.: +33 1 46.22.51.73 – Fax: +33 1 47.54.90.78 – E-mail: p.simon@villeneau.com

Sécrétaire Général chargé des questions internationales:
M. Philippe DELEBECQUE, Professeur à l’Université de Paris I, Panthéon-Sorbonne 4, rue de la Paix, 75002 PARIS – Tel.: +33 1 42.60.35.60 – Fax: +33 1 42.60.35.76 – E-mail: ph.delebecque@wanadoo.fr

Secrétaires Généraux Adjoints:
M. Patrice REMBAUVILLE-NICOLLE, Avocat à la Cour, 4, rue de Castellane, 75008 Paris. Tel.: +33 1 42.66.34.00 – Fax: +33 1 42.66.35.00 – E-mail: patrice.rembauville.nicolle@rbm21.com

Mme Laetitia JANBON, Avocat à la Cour, SCP L. Janbon, 1, rue Saint Firmin, 34000 MONTPELLIER – Tel.: +33 4 67.66.07.95 – Fax: +33 4 67.66.39.09 – E-mail: laetitia.janbon@wanadoo.fr

Trésorier: Me. Philippe GODIN, Avocat à la Cour, Bouloy Grellet & Godin, 69 rue de Richelieu, 75002 Paris. Tel.: +33 1 44.55.38.83 – Fax: +33 1 42.60.30.10 – E-mail: bg.g@avocaweb.tm.fr
Members du Comité de Direction

M. François ARRADON, Président Chambre Arbitrale Maritime de Paris – 16, rue Daunou, 75008 PARIS. Tel: +33 1 42.96.40.41 – Fax: +33 1 42.96.40.42 – E-mail: camp2@wanadoo.fr

M. Olivier CACHARD, Professeur agrégé de droit privé, Doyen de la Faculté Université De Nancy 2, 13, place Carnot - C.O. n° 26, 54035 Nancy Cedex. Tel.: +33 3 83.19.25.10 – Fax: +33 3 83.30.58.73 – E-mail: Olivier.Cachard@univ-nancy2.fr

M. Jean-Paul CHRISTOPHE, Expert maritime, Paris, 12, rue Ernest Tissot, 92210 Saint-Cloud. Tel.: +33 1 47.71.11.89 – Fax: +33 1 47.71.11.89 – E-mail: jp.christophe@wanadoo.fr

Mme Valérie CLEMENT-LAUNOY, Directrice Juridique, Seafrance, 1, avenue de Flandre, 75019 PARIS. Tel.: +33 1 53.35.11.62 – Fax: +33 1 53.35.11.64 – E-mail: velement@seafrance.fr

Mme Isabelle CORBIER, Avocat à la Cour, 134, Bld Saint-Germain, 75006 Paris. Tel.: +33 1 43.26.15.25 – Fax: +33 1 43.23.55.58 – E-mail: ic@isabellecorbier.com

M. Luc GRELLET, avocat à la cour, Bouloy-Grellet & Godin, 69, rue de Richelieu, 75002 PARIS – Tel.: +33 1 44.55.38.83 – Fax: +33 1 42.60.30.10 – E-mail: bg.g@avocaweb.tm.fr

M. Gilles HELIGON, Directeur Sinistres Maritime Aviation, AXA Corporate Solutions, 4, rue Jules Lefebvre, 75426 Paris Cedex 09. Tel.: +33 1 56.92.90.99 – Fax: +33 1 56.92.86.80 – E-mail: gilles.heligon@axa-corporatesolutions.com

M. Christian HUBNER, Conseiller juridique, Etablissement Marine, AXA Corporate Solutions, 2, rue Jules Lefebvre, 75426 Paris Cedex 09. Tel.: +33 1 56.92.95.48 – Fax: +33 1 56.92.88.90 – E-mail: christian.hubner@axa-corporatesolutions.com

Me Frédérique LE BERRE, Avocat à la Cour, Le Berre Engelsen Witvoet, 44, avenue d’Iéna, 75116 PARIS – Tel.: +33 1 53.67.84.84 – Fax: +33 1 47.20.49.70 – E-mail: f.leberre@lbew-avocats.fr

M. Didier LE PRADO, Avocat aux Conseils, 8, Villa Bosquet, 75007 PARIS – Tel.: +33 1 44.18.37.95 – Fax: +33 1 44.18.37.95 – E-mail: dlpavoc@wanadoo.fr

Me Bernard MARGUET, Avocat à la Cour, 13 Quai George V – BP 434 – 76057 Le Havre Cedex – Tel.: +33 2 35.42.09.06 – Fax: +33 2 35.22.92.95 – E-mail: marguetelecoz@nerim.fr

Mme Pascale MESNIL, Juge, Tribunal de Commerce de Paris, 77, rue des Beaux Lieux, 95550 BESSANCOURT – Tel/Fax: +33 1 39.60.10.94 – E-mail: pmesniltcp@tiscali.fr

M. Martin NDENDE, Professeur des universités-Directeur adjoint du Centre de Droit Maritime et Océanique, Université De Nantes, Chemin de la Censive-du-Tertre - BP 81307, 44313 Nantes Cedex 03, Tel.: +33 2 40.14.15.87 – E-mail: martin.ndende@droit.univ-nantes.fr

M. Thierry PETEL, Avocat à la Cour, SCP Scheuber Jeannin Petel, 91, rue Saint-Lazare, 75009 Paris, Tel.: +33 1 42.85.43.35 – Fax: +33 1 42.85.43.60 – E-mail: info@sjpshiplaw.com

M. Olivier RAISON, Avocat à la Cour, Raison & Raison-Rebufat, 6 Cours Pierre Puger, 13006 Marseille, Tel.: +33 4 91.54.09.78 – Fax: +33 4 91.33.13.33 – E-mail: oraison@raison-avocats.com

Mme Nathalie SOISSON, Coordination Sécurité Transport Groupe, TOTAL, 2, Place de la Coupole, La Défense 6, 92078 Paris La Defense – Tel.: +33 1 47.44.68.43 – Fax: +33 1 47.44.75.13 – E-mail: nathalie.soisson@total.com

Titular Members:

Mme Pascale ALLAIRE-BOURGIN, M. Philippe BOISSON, Professeur Pierre BONASSIES, Me Emmanuel FONTAINE, Me Philippe GODIN, Me Luc GRELLET, M. Pierre LATRON, Mme Françoise MOUSSU-ODIER, M. Roger PARENTHOU, M. André PIERRON, Me Patrice REMBAUVILLE-NICOLLE, Mme Martine REMOND-GOUIL-LOUD, Me Henri de RICHEMONT, Me Jean-Serge ROHART, Me Patrick SIMON, Professeur Yves TASSEL, Me Alain TINAYRE, Professeur Antoine VIALARD

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GERMANY

**DEUTSCHER VEREIN FÜR INTERNATIONALES SEERECHT**
(German Maritime Law Association)
Esplanade 6, 20354 Hamburg
Tel.: +49 40 350.97219 – Fax: +49 40 350.97211
E-mail: heitmann@reederverband.de

*Established: 1898*

**Officers:**

*President:* Dr. Inga SCHMIDT-SYASSEN, Vors. Richterin am HOLG Hamburg, Hanseatisches Oberlandesgericht, 6 Zivilsenat, Sievekingplatz, 20355 Hamburg. Tel.: +49 40 42843.2087 – Fax: +49 40 42843.4097 – E-mail: inga.Schmidt-syasseen@olg.justiz.hamburg.de

*Vice-President:* Dr. Bernd KRÖGER, Möörkenweg 39a, 21029 Hamburg. Tel. +49 40 7242.916 – Fax: +49 40 30330.933 – E-mail: gerke@reederverband.de

*Secretary:* Dr. Jan-Thiess HEITMANN, Verband Deutscher Reeder, Esplanade 6, 20354 Hamburg. Tel. +49 40 35097.219 – Fax: +49 40 35097.211 – E-mail: heitmann@reederverband.de

**Members:**

Dr. Sven GERHARD, Württembergische und Badische Versicherungs-Aktiengesellschaft Niederlassung Hamburg, Katharinenstraße 29, 20457 Hamburg. Tel.: +49 40 3604.401 – Fax: +49 40 3604.349 – E-mail: sven.gerhard@wueba.de

Wolfgang JÜRSS, Allianz Marine & Aviation, Versicherungs-Aktiengesellschaft, Großer Burstah 3, 20457 Hamburg. Tel.: +49 40 36173.679 – E-mail: wolfgang.juerrss@ma.allianz.com

Prof. Dr. Rainer LAGONI LL.M., Institut für Seerecht und Seehandelsrecht der Universität Hamburg, Heimhuder Straße 71, 20148 Hamburg. Tel.: +49 40 42838.2240 – Fax: +49 40 42838.6271 – E-mail: seerecht@jura.uni-hamburg.de

Dr. Volker LOOKS, CMS Hasche, Sigle Rechtsanwälte, Stadthausbrücke 1-3, 20355 Hamburg. Tel.: +49 40 3763.0303 – Fax: +49 40 3763.0300 – E-mail: volker.looks@cms-hs.com

Dr. Hans-Heinrich NOLL, Verband Deutscher Reeder, Esplanade 6, 20354 Hamburg. Tel.: +49 40 35097.227 – Fax: +49 40 35097.211 – E-mail: noell@reederverband.de

Dr. Klaus RAMMING, Soz. Lebuhn & Puchta, Vorsetzen 35, 20459 Hamburg. Tel.: +49 40 3747780 – Fax: +49 40 364650 - E-Mail: klaus.ramming@lebuhn.de

**Titular Members:**

Dr. Hans-Christian ALBRECHT, Hartmut von BREVERN, Prof. Dr. Rolf HERBER, Dr. Bernd KRÖGER, Dr. Dieter RABE, Dr. Klaus RAMMING, Dr. Thomas M. REME’.

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GREECE

GREEK MARITIME LAW ASSOCIATION
(Association Hellenique de Droit Maritime)
Dr. A. Antapassis, 10 Akti Poseidonos, 185 31 Piraeus
Tel.: +30 210 422.5181 – Fax: +30 210 422.3449
E-mail: antalblaw@ath.forthnet.gr

Established : 1911

Officers:
President: Dr. Antoine ANTAPASSIS, Professor at the University of Athens, Advocate, 10 Akti Poseidonos, 185 31 Piraeus. Tel.: +30 210 422.5181 – Fax: +30 210 422.3449 – E-mail: antalblaw@ath.forthnet.gr
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Aliki KIANTOU-PAPOUKI, Emeritus Professor at the University of Thessaloniki, 3 Agias Theodoras, 546 23 Thessaloniki. Tel.: (2310) 221.503 – Fax (2310) 237.449
Nikolaos SKORINIS, Advocate, 67 Hiroon Polytechniou, 185 36 Piraeus. Tel. +30 210 452.5848-9/452.5855 – Fax: +30 210 418.1822
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Deputy Secretary-General: Thanos THEOLOGIDIS, Advocate, 4 Skouze, 185 35 Piraeus. Tel.: +30 210 429.4010 – Fax: +30 210 429.4025
Assistant Secretary-General: Deukalion REDIADES, Advocate, 41 Akti Miaouli, 185 36 Piraeus. Tel.: +30 210 429.4900/429.3880/429.2770 – Fax: +30 210 429.4941
Ioannis MARKIANOS-DANILOUS, Advocate, 29 I. Drosopoulou, 112 57 Athens. Fax: +30 210 821.7869
Treasurer: Petros CAMBANIS, Advocate, 50 Omiou, 106 72 Athens. Tel.: +30 210 363.7305/363.5618 – Fax: +30 210 360.3113

Members:
Lia ATHANASSIOY, Advocate, Lecturer at the University of Athens, Kallipoleos 36, 16777, Elliniko. Tel.: +30 210 3390118/3390119- Fax: +30 210 3387337
Ioannis HAMILOTHORIS, Judge, 17 Notou, 153 42 Ag. Paraskevi. Fax: +30 210 639.3741
Ioannis KOROTZIS, Judge, P.O.Box 228, 19003, Markopoulo Attikis, Tel.: +30 22990 72771
Panayotis MAVROYANNIS, Advocate, 96 Hiroon Polytechniou, 185 36 Piraeus. Tel.: +30 210 451.0249/451.0562/413.3862 - Fax: +30 210 453.5921
Panayotis SOTIROPOULOS, Advocate, 4 Lykavittou, 106 71 Athens. Tel.: +30 210 363.0017/360.4676 - Fax: +30 210 364.6674 - E-mail: law-sotiropoulos@ath.forthnet.gr
Stelios STYLIANOY, Advocate, Platonos 12, 185 35 Piraeus. Tel.: +30 210 411.7421/413.0547 - Fax: +30 210 417.1922
Dr. Grigorios TIMAGENIS, Advocate, 57 Notara Sreet, 18535 Piraeus. Tel.: +30 210 422.0001 - Fax +30 210 422.1388 – E-mail: gjt@timagenislaw.com

Titular Members:
Christos ACHIS, Constantinos ANDREPOULOS, Anthony ANTAPASSIS, Paul AVRAMEAS, Aliki KIANTOU-PAPOUKI, Panayiotis MAVROYANNIS, Ioannis ROKAS, Nikolaos SKORINIS, Panayotis SOTIROPOULOS
PART I - ORGANIZATION OF THE CMI

Member Associations

GUATEMALA

COMITE GUATELMALTECO DE DERECHO MARITIMO Y PORTUARIO
(The Maritime Law Association of Guatemala)
22 avenida 0-26 zona 15, Vista Hermosa II, Ciudad de Guatemala,
Guatemala, Centro America
Tel.: +502 3691037 – E-mail: jmarti@guate.net

Officers:
President: Mr. José Eduardo MARTI BAEZ

GULF

GULF MARITIME LAW ASSOCIATION
c/o Kurtha & Co.
Attn. Dr. Aziz Kurtha
Seventeenth Floor (1707) – City Tower 2 – P.O.Box 37299
Shaikh Zayed Road, Dubai, United Arab Emirates
Tel.: +971 4-3326277 – Fax: +971 4-3326076

Established: 1998

Officers:
President: Mr. Salman LUTFI, UAE National
Vice-President: Dr. Aziz KURTHA, British National, Dubai
Secretary & Treasurer: Mr. Joseph COLLINS, Indian National, Dubai

HONG KONG, CHINA

THE MARITIME LAW ASSOCIATION OF HONG KONG
HONG KONG MARITIME LAW ASSOCIATION
c/o Richards Butler
20th Floor, Alexandra House, 16-20 Chater Road,
Central, Hong Kong
Tel.: +852 2810.8008 – Fax: +852 2810.1607
E-mail: secretary@hkmla.org – Website: www.hkmla.org

Established: 1978 (re-established: 1998)

Executive Committee Members:
Honourable Mr. Justice William Waung (Chairman); Martin Heath – Clyde & Co (Deputy
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Clifford Smith – Counsel; Chris Potts – Crump & Co; Nicholas Mallard – Dibb Lupton
Member Associations

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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

INDONESIA

LEMBAGE BINA HUKUM LAUT INDOESIA
(Indonesian Institute of Maritime Law and Law of the Sea)
Jl. Yusuf Adiwinata 33 A,
Jakarta 10310, Indonesia
Tel.: +62 21 390.9737 – Fax: +62 21 390.5772

Established: 1981

Board of Management:


Vice: Mrs. Titiek PUJOKO, S.H., Vice Director at PT. Gatari Air Service, c/o PT. Gatari Air Service, Bandar udara Halim Perdana Kusuma, Jakarta 13610, Indonesia. Tel.: +62 21 809.2472


Vice: Mrs. Soesi SUKMANA, S.H., PT. Pelni, c/o PT. Pelni, Jl. Gajah Mada no.14, 2nd Floor, Jakarta, Indonesia. Tel.: +62 21 385.4173

Chief of Dept. Research & Development: Faizal Iskandar MOTIK, S.H., Director at ISAFIS, c/o Jl. Banyumas no. 2 Jakarta 10310, Indonesia. Tel.: +62 21 390.9201/390.2963

– Home: Jl. MPR III Dalam no. 5 Cilandak, Jakarta 12430, Indonesia

IRELAND

IRISH MARITIME LAW ASSOCIATION
All correspondence to be addressed to the Hon. Secretary:
Mr. Sean Kelleher, Irish Dairy Board, Grattan House, Lower Mount Street, Dublin 2, Ireland. Tel.: +353 1 661.9599 - Fax: +353 1 662.2941
E-mail: skelleher@idb.ie

Established: 1963

Officers:
President: Brian McGOVERN, SC, Law Library Building, 158/159 Church Street, Dublin 7
Tel.: +353 1 804.5070 – Fax: +353 1 804.5164 -E-mail: bjmcg@indigo.ie
Vice-President: Petria McDonnell, McCann FitzGerald, Solicitors, 2 Harbournmaster Place, Dublin 1. Tel.: +353 1 8290 000 – Fax: +353 1 8290.010 – E-mail: pmd@mccannfitzgerald.ie
Hon. Secretary: Sean KELLEHER, Irish Dairy Board, Grattan House, Lower Mount Street, Dublin 2, Ireland. Tel.: +353 1 661.9599 - Fax: +353 1 662.2941 - E-mail: skelleher@idb.ie
Treasurer: Paul GILL, Dillon Eustace, Solicitors, 1 Upper Grand Canal Street, Dublin 4.
Tel.: +353 1 667.0022 – Fax: +353 1 667.0042 – E-mail: paul.gill@dilloneustace.ie

Committee Members:
John Wilde CROSBIÉ, BL, Law Library, Four Courts, Dublin 7. Tel.: +353 1 872.0777 - Fax: +353 1 872.0749 - E-mail: crosbee@eircom.net
Twinkle EGAN, BL, 43 Castle Court, Booterstown Avenue, Blackrock, Co. Dublin. Tel.: +353 1 817.4980 – Fax: 872.0455 -E-mail: twinkle@cyberia.ie
Bill HOLOHAN, Bill Holohan & Associates, Solicitors, 88 Ranelagh Road, Dublin 6. Tel.: +353 1 4911915 - Fax: +353 1 4911916 - E-mail: holohanb@indigo.ie
Eamonn MAGEE, BL, Allianz Insurance, Burlington Road, Dublin 4. Tel.: +353 1 613.3223 - Fax: +353 1 660.5246 - E-mail: eamonn.magee@allianz.ie
Dermot McNULTY, BL, Marine Consultant, 97 Willow Park Avenue, Dublin 11. Tel.: +353 1 842.2246 - Fax: +353 1 842.9896 - E-mail: mcnulty@tinet.ie
Cian O CATHAIN, Vincent & Beatty, Solicitors, 67/68 Fitzwilliam Square, Dublin 2. Tel.: +353 1 676.3721 - Fax: +353 1 678.5317 - E-mail: vinbea@securemail.ie
Colm O hOISIN, BL, P.O.Box 4460, Law Library Buildings, 158/159 Church Street, Dublin 7. Tel.: +353 1 804.5088 – Fax: +353 1 804.5138 – E-mail: cohoisin@indigo.ie
Member Associations

Vincent POWER, A & L Goodbody Ltd., Solicitors, IFSC, North Wall Quay, Dublin 1. Tel.: +353 1 649.2000 – Fax: +353 1 649.2649 – E-mail: vpower@algoodbody.ie
Mary SPOLLEN, BL, National Oil Reserve Agency, 7 Clanwilliam Square, Grand Canal Quay, Dublin 2, Ireland. Tel.: +353 1 676.9390 – Fax +353 1 676.9399 – E-mail: mary.spollen@nora.ie
Sheila TYRRELL, Arklow Shipping Ltd., North Quay, Arklow, Co. Wicklow. Tel.: +353 402 39901 – Fax: +353 402 39902 - E-mail: smt@asl.ie

Titular Members:

Paul GILL, Bill HOLOHAN, Sean KELLEHER, Eamonn MAGEE, Petria McDONNELL, Brian McGOVERN, J. Niall McGOVERN, Dermot J. McNULTY, Colm O hOISIN, Mary SPOLLEN

Individual members: 37
Representative members: 57

ISRAEL

HA-AGUDA HA ISRAELIT LE MISPHAT YAMI
(Israel Maritime Law Association)
c/o P. G. Naschitz,
Naschitz, Brandes & Co.,
5 Tuval Steet, Tel-Aviv 67897
Tel.: +972 3 623.5000 – Fax: +972 3 623.5005
E-mail: pnaschitz@nblaw.com

Established: 1968

Officers:

President: P. G. NASCHITZ, Naschitz, Brandes & Co., 5 Tuval Street, Tel-Aviv 67897. Tel.: +972 3 623.5000 – Fax: +972 3 623.5005 – E-mail: pnaschitz@nblaw.com
Vice-President: Gideon GORDON, S. Friedman & Co., 31 Ha’atzmaut Road, Haifa. Tel.: +972 4 670.701 – Fax: +972 4 670.754
Honorary President: Justice Tova STRASSBERG-COHEN, Justice of the Supreme Court of Israel

Titular Members:

Gideon GORDON, Peter G. NASCHITZ, Justice Tova STRASSBERG-COHEN

Membership:

65
ITALY

ASSOCIAZIONE ITALIANA DI DIRITTO MARITTIMO
(Italian Association of Maritime Law)
Via Roma 10 – 16121 Genova
Tel.: +39 010 586441 – Fax: +39 010 594805
E-mail: presidenza@aidim.org

Established: 1899

President ad honorem: Francesco BERLINGIERI, Via Roma 10, 16121 Genova. Tel.: +39 010 586441 – Fax: +39 010 594805 – E-mail: slb@dirmar.it

Officers:
President: Giorgio BERLINGIERI, Via Roma 10, 16121 Genova. Tel.: +39 010 586441 – Fax: +39 010 594805 – E-mail: presidenza@aidim.org
Vice-Presidents:
Elda TURCO BULGHERINI, Viale G. Rossini 9, 00198 Roma. Tel.: +39 06 8088244 – Fax: +39 06 8088980 – E-mail: studioturco@tiscalinet.it
Sergio M. CARBONE, Via Assarotti 20, 16122 Genova. Tel.: +39 010 885242 – Fax: +39 010 8314830 – E-mail: smcarbon@tin.it
Secretary General: Giuseppe DUCA, S. Croce, 266, 30135 Venezia – Tel.: +39 041 711017 – Fax: +39 041 795473 – E-mail: segretario@aidim.org
Treasurer: Marcello MARESCA, Via Bacigalupo 4/13, 16122 Genova. Tel.: +39 010 877130 – Fax: +39 010 881529 – E-mail: tesoriere@aidim.org
Councillors:
Alberto BATINI, Via di Franco 9, 57100 Livorno. Tel. +39 0586 883232 – Fax: +39 0586 884233 – E-mail: alberto.batini@studiolegalebatini.com
Mauro CASANOVA, Via XX Settembre 14, 16121 Genova. Tel.: +39 010 587888 – Fax: +39 010 580445 – E-mail: sclasanova@libero.it
Sergio LA CHINA, Via Roma 5, 16121 Genova. Tel.: +39 010 541588 – Fax: +39 010 592851 – E-mail: sergiolachina@tin.it
Emilio PIOMBINO, Via Ceccardi 4/26, 16121 Genoa, Italy. Tel.: +39 010 562623 – Fax: +39 010 587259 – E-mail: epiombino@studioscavallotto.it
Francesco SICCARDI, Via XX Settembre 37, 16121 Genova, Italy. Tel.: +39 010 543951 – Fax: +39 010 564614 – E-mail: f.siccardi@siccardibrignante.it
Sergio TURCI, Via Ceccardi 4/30, 16121 Genova. Tel.: +39 010 5535250 – Fax: +39 010 5705414 – E-mail: turcilex@turcilex.it
Enzio VOLLI, Via San Niccolò 30, 34100 Trieste. Tel.: +39 040 638384 – Fax: +39 040 360263 – E-mail: info@studiovalli.it
Stefano ZUNARELLI, Via del Monte 10, 40126 Bologna. Tel.: +39 051 7457221 – Fax: +39 051 7457222 – E-mail: stefano.zunarelli@studiozunarelli.com

Honorary Members:
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Titular Members:
Nicola BALESTRA, Francesco BERLINGIERI, Giorgio BERLINGIERI, Giorgia M. BOI, Angelo BOGLIONE, Franco BONELLI, Sergio M. CARBONE, Giorgio CAVALLO, Sergio LA CHINA, Antonio LEFEBVRE D’ÓVIDIO, Emilio PIOMBINO, Francesco SICCARDI, Sergio TURCI, Enzio VOLLI

Membership:
**JAPAN**

**THE JAPANESE MARITIME LAW ASSOCIATION**

9th Fl. Kaiun Bldg., 2-6-4, Hirakawa-cho, Chiyoda-ku, Tokyo
Tel.: +81 3 3265.0770 – Fax: +81 3 3265.0873
E-mail: jmla@d6.dion.ne.jp

*Established: 1901*

**Officers:**

*President:* Tsuneo OHTORI, Professor Emeritus at the University of Tokyo, 6-2-9-503, Hongo, Bunkyo-ku, Tokyo 113-0033, Japan

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- Hachiro TOMOKUNI, Counselor of Mitsui O.S.K. Lines Ltd., c/o M.O.L., 2-1-1 Toranomon, Minato-ku, Tokyo 105-8685
- Hisashi TANIKAWA, Professor Emeritus at Seikei University, 4-15-33-308, Shimorenjaku 4-chome, Tokyo 1810013
- Seiichi OCHIAI, Professor of Law at the University of Tokyo, 4-5-2-302 Nishi-shinjyuku, Shinjyuku-ku, Tokyo 160-0023
- Kenjiro EGASHIRA, Professor of Law at the University of Tokyo, 3-25-17, Sengencho 3-chome, Higashikurume, Tokyo 203-0012

*Secretary General:* Tomonobu YAMASHITA, Professor of Law at the University of Tokyo, Sekimae 5-6-11, Musashino-ku, Tokyo 180-0014, Japan. E-mail: yamashita@j.u-tokyo.ac.jp

**Titular Members:**

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**KOREA**

**KOREA MARITIME LAW ASSOCIATION**

Room # 1002, Boseung Bldg., Euljiro 2-ga, Jung-Gu, Seoul 100-192, Korea
Tel.: +82 2 754.9655 – Fax: +82 2 752.9582
E-mail: kormla@kormla.or.kr – Website: http://www.kormla.or.kr

*Established: 1978*

**Officers:**

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*Vice-Presidents:*

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Individual members: 150

D.P.R. OF KOREA
CHOSON MARITIME LAW ASSOCIATION
Maritime Building 2nd Floor, Donghundong, Central District, Pyongyang, DPRK
Tel.: +850 2 18111/999 ext: 8477 – Fax: +850 2 3814567
E-mail: radiodept@silibank.com

Established: 1989

Officers:
President: Mr. RA DONG HI, Vice Minister of the Ministry of Land & Maritime Transportation
Vice-President: Mr. KIM JU UN, Director of Legal & Investigation Department of the Ministry of Land & Maritime Transportation
Secretary-General: Mr. KIM YONG HAK, Secretary-General of Choson Maritime Arbitration Commission
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Mr. KO HYON CHOL, Professor of Law School of KIM IL SONG University
Mr. LIM YONG CHAN, Director of International Law Research Department of Social Academy of DPRK
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Individual Members: 142
MALAYSIA

MALAYSIAN MARITIME LAW ASSOCIATION
20th Floor, Arab-Malaysian Building,
55 Jalan Raja Chulan
50200 Kuala Lumpur, Malaysia
Tel.: +60 3 201.1788 [25 lines] – Fax: +60 3 201.1778/9
E-mail: shooklin@tm.net.my

Established: 1993

Officers:
President: Nagarajah MUTTIAH, Shook Lin & Bok, 20th Floor, Arab-Malaysian Building,
55 Jalan Raja Chulan, P.O.Box 10766, 50724 Kuala Lumpur
Vice-President: Encik Abdul Rahman Bin Mohammed Rahman HASHIM, V.T. Ravindran & Partners, 18th Floor, Plaza MBF, Jalan Ampang, 50450 Kuala Lumpur
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MALTA

MALTA MARITIME LAW ASSOCIATION
144/1 Palazzo Marina, Marina Street, Pietà MSD08, Malta G.C.
Tel.: +356 2125.0319 – Fax: +356 2125.0320
E-mail: mlac1@onvol.net

Established: 1994

Officers:
President: Dr. Tonio FENECH, Fenech & Fenech Advocates, 198 Old Bakery Street, Valletta VLT 09, Malta G.C. Tel.: +356 2124.1232 – Fax: +356 2599.0641 –
E-mail: tonio.fenech@fenlex.com
Vice-Presidents:
Ms. Bella HILI, Ocean Finance Consultants/Arendi Consultants, 6, Goldfield House, Dun Karm Street, B’Kara BKRO6, Malta G.C. Tel.: +356 2149.5582 – Fax: +356 2149.5599 – E-mail: bella@onvol.net
Dr. Kevin DINGLI, Dingli & Dingli, 18/2 South Street, Valletta VLT11, Malta G.C. Tel.: +356 2123.6206 – Fax: +356 21240321 – E-mail: dingli@maltanet.net
Secretary: Dr. Daniel AQUILINA, Ganado & Associates, 171 Old Bakery Street, Valletta VLT 09, Malta G.C. Tel.: +356 2123.5406 – Fax: +356 2123.2372 – E-mail: daquilina@jmganado.com
Treasurer: Ms. Miriam CAMILLERI, MC Consult “Is-Sienja”, Pedidalwett Street, Madliena STJ03, Malta. G.C. Tel.: +356 2137.1411 – Fax: +356 2333.1115 – E-mail: miriam@waldonet.net.mt
Executive Committee Members:
Dr. Ann FENECH, Fenech & Fenech Advocates, 198 Old Bakery Street, Valletta VLT09, Malta G.C. Tel.: +356 2124.1232 – Fax: +356 2599.0644 – E-mail: ann.fenech@fenlex.com
Dr. Ivan VELLA, Mamo TCV Advocates, Palazzo Pietro Stiges, 90 Strait Street, Valletta VLT05, Malta G.C. Tel.: +356 2123.2271 – Fax: +356 2124.4291 – IMO International Maritime Law Institute, University of Malta, Tal-Qroqq, Msida, Malta G.C. Tel.: +356 2131.0816 – Fax: +356 2134.3092 – E-mail: ivan.vella@imli.org
Dr. Malcolm MIFSUD, GMG Services Ltd., 123 Melita Street, Valletta, VLT 12, Malta G.C. Tel.: +356 2123.7172 – Fax: +356 2123.7314 – E-mail: mmifsud@gma.com.mt
Mr. Norman XERXEN, J.B. Sorotto Ltd, Exchange Buildings, Republic Street, Valletta VLT 05, Malta G.C. Tel.: +356 9949.7326 – Fax: +356 2125.0326 – E-mail: admin@jbsorotto.com.mt

MAURITANIE
ASSOCIATION MAURITANIENNE DU DROIT MARITIME
Avenue C.A. Nasser, P.O.B. 40034
Nouakchott, Mauritanie
Tel. : 222 2 52891 – Fax: 222 2 54859

Established: 1997

Officers:

Président: Cheikhany JULES
Vice-Présidents:
Didi OULD BIHE, Brahim OULD SIDI
Secrétaire Général : Abdel Kader KAMIL
Secrétaire au Trésor : Maître Moulaye El Ghaly OULD MOULAYE ELY
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MEXICO

ASOCIACION MEXICANA DE DERECHO MARITIMO, A.C.
(Mexican Maritime Law Association)
Rio Hudson no. 8, Colonia Cuauhtémoc, Delegacion Cuauhtémoc,
C.P. 06500, México D.F.
Tel.: +52 55 5211.2902/5211.5805 – Fax: +52 55 5520.7165
E-mail: lawyers@melo-melo.com.mx

Established: 1961

Officers:
President: Dr. Ignacio L. MELO Jr.
Vice-President: Fernando MELO
Secretary: Agnes CELIS
Treasurer: Dr. David ENRIQUEZ
Vocals: José Manuel MUNOZ, Felipe ALONSO, Enrique GARZA, Ana Luisa MELO, Cecilia STEVENS

Titular Members:
Dr. Ignacio L. MELO Jr.

MOROCCO

ASSOCIATION MAROCAINE DE DROIT MARITIME
(Moroccan Association of Maritime Law)
53, Rue Allal Ben Abdellah, 1er Etage, Casablanca 20000, Morocco
All correspondence to be addressed to the Secretariat:
BP 8037 Oasis, Casablanca 20103, Morocco
Tel.: +212 2 258.892 – Fax: +212 2 990.701

Established: 1955

Officers:
President: Farid HATIMY, BP 8037 Oasis, Casablanca 20103, Morocco. Tel.: +212 2 258.892 – Fax: +212 2 990.701
Vice-Presidents:
Mrs. Malika EL-OTMANI – Tel.: +212 2 254.371/232.324
Fouad AZZABI – Tel.: +212 2 303.012
Abed TAHIRI – Tel.: +212 2 392.647/392.648
Hida YAMMAR – Tel.: +212 2 307.897/307.746
General Secretary: Miloud LOUKILI – Tel.: +212 2 230.740/230.040
Deputy General Secretaries:
Saad BENHAYOUN – Tel.: +212 2 232.324
Mrs. Leila BERRADA-REKHAMI – Tel.: +212 2 318.951/316.113/316.032/317.111/319.045
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Deputy Treasurer: Mrs. Hassania CHERKAOUI – Tel.: +212 2 232.354/255.782
PART I - ORGANIZATION OF THE CMI

Member Associations

Assessors:
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Abderrafih BENTAHILA– Tel.: +212 2 316.412/316.597
Tijani KHARBACHI – Tel.: +212 2 317.851/257.249
Jean-Paul LECHARTIER – Tel.: +212 2 309.906/307.285
Abdelaziz MANTRACH – Tel.: +212 2 309.455

Titulary Members:
Mohammed MARGAOUI

NETHERLANDS

NEDERLANDSE VERENIGING VOOR ZEE- EN VERVOERSRECHT
(Netherlands Maritime and Transport Law Association)
Prinsengracht 668, 1017 KW Amsterdam
Tel.: +31 20 626.0761 – Fax: +31 20 620.5143 – website: www.nvzv.nl

Established: 1905

Officers:
President: Prof. Mr G.J. VAN DER ZIEL, (Erasmus Universiteit Rotterdam), Doornstraat 23, 3151 VA Hoek van Holland. Tel.: +31 174 384.997 – Fax: +31 174 387.146 – E-mail: vanderziel@xs4all.nl
Vice-President: Mr J.M.C. WILDSCHUT, P.O. Box 10711, 1001 ES Amsterdam. Tel.: +31 20 626.0761 – Fax: +31 20 620.5143 – E-mail: JMC.Wildschut@planet.nl
Treasurer: : De heer J. POST, Post & Co. (P&I) B.V, P.O. Box 443, 3000 AK Rotterdam. Tel.: +31 10 453.5888 – Fax: +31 10 452.9575 – E-mail: jack.post@post-co.com
Mr T. ROOS, Van Dam & Kruidenier Advocaten, P.O. Box 4043, 3006 AA Rotterdam. Tel.: +31 10 288.8800 – Fax: +31 10 288.8828 – E-mail: roos@damkru.nl
Mr T. VAN DER VALK, AKD Prinsen Van Wijmen, P.O. Box 4302, 3006 AH Rotterdam. Tel.: +31 10 272.5404 – Fax: +31 10 272.5430 – E-mail: tvandervalk@akd.nl

Members:
Prof. Mr M.H. CLARINGBOULD, Van Traa Advocaten, P.O. Box 21390, 3001 AJ Rotterdam. Tel.: +31 10 413.7000 – Fax: +31 10 414.5719 – E-mail: claringbould@van traan.nl
Mr J.J. CROON, Transavia Airlines C.V., P.O. Box 7777, 1118 ZM, Schiphol. Tel.: +31 20 604.6397 – Fax: +31 20 648.4533 – E-mail: croon@transavia.nl
Mr J.M. VAN DER KLOOSTER, Gerechtshof ’s-Gravenhage, P 2 - K 155, P.O. Box 20302, 2500 EH ’s-Gravenhage. Tel. + 31 70 381.1362 – Fax: +31 70 381.3256 – E-mail: h.van.der.klooster@rechtspraak.nl
Mr A.O.E. KNEEFEL, Verbond van Verzekeraars, P.O. Box 93450, 2509 AL ’s-Gravenhage. Tel.: +31 55 579.5220 – Fax: +31 55 579.2162 – E-mail: arno.kneefel@achmea.nl
Mr J.G. TER MEER, Boekel de Nerée, P.O. Box 75510, 1070 AM Amsterdam. Tel.: +31 20 431.3236 – Fax: +31 20 795.3900 – E-mail: jg.termeer@bdn.nl
Mr A.J. NOORDERMEER, RaboBank Shipping, P.O. Box 10017, 3004 AA, Rotterdam. Tel. +31 10 400.3961 – Fax: +31 10 400.3730 – E-mail: a.j.noordermeer@rotterdam.rabobank.nl
Mrs Mr H.A. REUKENS, Ministerie van Verkeer en Waterstaat, P.O. Box 20906, 2500 EX’s-Gravenhage. Tel.: +31 70 351.1800 – Fax: +31 70 351.8504– E-mail: henny.reumkens@minvenw.nl
Member Associations

Mr P.J.M. RUYSER, EVO, P.O. Box 350, 2700 AV Zoetermeer. Tel.: +31 79 346.7244 – Fax: +31 79 346.7888 – E-mail: p.ruyster@evo.nl

Mr P.L. SOETEMAN, Marsh B.V., P.O. Box 8900, 3009 CK Rotterdam. Tel.: +31 10 406.0489 – Fax: +31 10 406.0481 – E-mail: paul.soeteman@marsh.com

Mr T.P. TAMMES, KVNR, P.O. Box 2442, 3000 CK Rotterdam. Tel.: +31 10 414.6001 – Fax: +31 10 233.0081 – E-mail: tammes@kvnr.nl

Mrs W. VAN DER VELDE, Ministerie van Justitie, P.O. Box 20301, 2500 EH’s-Gravenhage. Tel. +31 70 370.6591 – Fax: +31 70 370.7932 – E-mail: w.van.der.velde@minjus.nl

Mr A.N. VAN ZELM VAN ELIDIK, (Rechtbank Rotterdam), Statenlaan 29, 3051 HK Rotterdam. Tel.: +31 10 422.5755 – E-mail: anvanzelm@hotmail.com

Mr F.J.W. VAN ZOELLEN, Havenbedrijf Rotterdam N.V., P.O. Box 6622, 3002 AP Rotterdam. Tel. +31 10 252.1495 – Fax: +31 10 252.1936 – E-mail: f.van.zoelen@portofrotterdam.com

Titular Members:

Jhr. Mr V.M. de BRAUW, Mr J.J.H. GERRITZEN, Mr R.E. JAPIKSE, Mr T. VAN DER VALK, Prof. Mr G.J. VAN DER ZIEL

NETHERLANDS ANTILLES

COMITE FOR MARITIME LAW, NETHERLANDS ANTILLES
Kaya W.F.G. Mensing 27, Curacao, Netherlands Antilles
Tel.: +599 9 465.7777 – Fax: +599 9 465.7666
E-mail: z&g@na-law.com

Officers:

President: Erich W.H. ZIELINSKI, Zielinski, & Gorsira, Law Offices, Kaya W.F.G. Mensing 27, P.O. Box 4920, Curacao, Netherlands Antilles. Tel.: +599 9 465.7777 – Fax: +599 9 465.7666 – E-mail: z&g@na-law.com

Vice-President: Captain Richard E. BRITT, Century Maritime Services, N.V., Kaya W.F.G. Mensing 27, P.O. Box 4920, Curacao, Netherlands Antilles. Tel.: +599 9 465.7777 – Fax: +599 9 465.7666 – E-mail: maritime@na-law.com

Secretary: Lex C.A. GONZALEZ, P.O. Box 6058, Curacao, Netherlands Antilles. Tel/Fax: +599 9 888.08.72 – Mobile +599 9 563.8290 – E-mail: geminibs@cura.net

Treasurer: Gerrit L. VAN GIFFEN, van Giffen Law Offices, A. de Veerstraat 4, Curacao, Netherlands Antilles. Tel.+599 9 465.6060 – 465.0344 – Fax +599 9 465.6678 – E-mail: vgiffen@giflaw.com

Members:

Jos Dijk IMB-RIZLAB, International Dokweg 19 Curacao, Netherlands Antilles. Tel.: +599 9 737.3586 – Fax: +599 9 737.0743

Mr. Freeke F. KUNST, Promes Trenite & Van Doorne Law Offices, Julianaplein 22, P.O. Box 504, Curacao, Netherlands Antilles. Tel.: +599 9 461.3400 – Fax: +599 9 461.2023

Ir. L. ABARCA, Tebodin Antilles N.V., Mgr. Kieckensweg 9, P.O. Box 2085, Curacao, Netherlands Antilles. Tel.: +599 9 461.1766 – Fax: +599 9 461.3506

Karel ASTER, Curacao Port Services N.V., Rijkseenheidboulevard z/n, P.O. Box 170, Curacao, Netherlands Antilles. Tel.: +599 9 461.5079, Fax: +599 9 461.3732

Teun NEDERLOF, Seatrade Reefer Chartering (Curacao) N.V., Kaya Flamboyan 11, P.O. Box 4918, Curacao, Netherlands Antilles. Tel.: +599 9 733.1500 – Fax: +599 9 733.1538
NIgeria

NIGERIAN MARITIME LAW ASSOCIATION
National Branch of the Comité Maritime International
31, Cameron Road Ikoyi, Lagos, Nigeria

Established: 1980

Officers:

President: Hon. Justice M.B. BELGORE (Rtd), 31 Cameron Road, Ikoyi, Lagos. Tel.: 2693997/2691679
First Vice President: Fola SASEGBON Esq., 61 Ijora Causeway, Ijora, Lagos. Tel.: 5836061/5832186
Second Vice President: Louis N. MBANEFO S.A.N., 230 Awolowo Road, Lagos. Tel.: 2694085 – E-mail: mbanlaw@infoweb.abs.net
Hon. Secretary: Chief E. O. IDOWU, 330, Murtala Muhammed Way, Ebute-Metta, Lagos. E-mail: eoidowu@yahoo.co.uk
First Assistant Secretary: Mrs Funke AGBOR, 38/40 Strachan Street (5th Floor), Lagos. Tel.: 2631960/2633528/2637178 – E-mail: aca@linkserve.com.ng
Second Assistant Secretary: Akin AKINBOTE, Esq., 7, Sunmbo Jibowu Street (Off Ribadu Road), Ikoyi, Lagos. Tel.: 2672279/2672289
Hon. Treasurer: Chief M. A. AJOMALE, Bola Ajomale & Co., 4, Campbell Street, Lagos. Tel.: 2630525/7755912 – E-mail: BAJomale@aol.com
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NORWAY

DEN NORSKE SJØRETTSFORENING
Avdeling av Comité Maritime International
(Norwegian Maritime Law Association)
c/o Thommessen Krefting Greve Lund, Attn.: Stephen Knudtzon
Postboks 1484, Vika N-0116 Oslo

Established: 1899

Officers:

47, P.O.Box 6706 St. Olavs Plass, 0130 Oslo. Tel.: +47 22 85 97 48 – Fax: +47 22 85 97 50 – E-mail: t.l.wilhelmsen@jus.uio.no

Members of the Board:

Torbjørn BEKKEN, DNV Norge, Veritasveien 1, 1322 Høvik. Tel.: +47 67 57 99 00 – Fax:
+47 67 57 98 07 – E-mail: torbjorn.bekken@dnv.com
Viggo BONDI, Norges Rederiforbund, Postboks 1452 Vika, 0116 Oslo. Tel.: +47 22 40 15 00 – Fax: +47 22 40 15 15 – E-mail: viggo.bondi@rederi.no
Kjetil EIVINDSTAD, Assuranceforeningen Gard, Servicebox 600, 4809 Arendal. Tel.: +47 37 01 91 00 – Fax: +47 37 02 48 10 – E-mail: kjetil.eivindstad@gard.no
Karl-Johan GOMBRII, Nordisk Skibsrederforening, Postboks 3033, Elisenberg, 0207
Oslo. Tel.: +47 22 13 13 56 00 – Fax: +47 22 43 00 35 - E-mail: kjgombrii@nordisk.no
Stephen KNUDTZON, Thommessen Krefting Greve Lund, Postboks 1484 Vika, 0116
Oslo. Tel.: +47 23 11 11 11 – Fax: +47 23 11 10 10 – E-mail: skn@thommessen.no
Morten LUND, Vogt & Wiig Advokatfirmaet AS, Postboks 1503 Vika, 0117 Oslo. Tel.: +47 22 41 01 90 – Fax: +47 22 42 54 85 – E-mail: morten.lund@vogtwiig.no
Erik RØSÆG, Nordisk Institutt for Sjørett, Universitetet i Oslo, Postboks 6706 St. Olavs
plass, 0130 Oslo. Tel.: +47 22 85 97 52 – Fax: +47 22 85 97 50 – E-mail: erik.rosag@jus.uio.no
Arne FALKANGER THORSEN, Bergesen Worldwide Gas ASA, Postboks 2800 Solli, 0204
Oslo. Tel.: +47 22 12 05 05 – Fax: +47 22 12 05 00 – E-mail: arne.thorsen@bwgas.com
Gaute GJELSTEN, Wikborg Rein & Co, Postboks 1513 Vika, 0117 Oslo. Tel.: +47 22 82 75 00 – Fax: +47 22 82 75 01 – E-mail: ggj@wr.no

Deputy:

Ingeborg OLEBAKKEN, Justisdepartementet Postboks 8005 Dep, 0030 Oslo Tel.: +47 22
24 56 92 – Fax: +47 22 24 27 25 – E-mail: ingeborg.olebakken@jd.dep.no

Titular Members:

Sjur BRAEKHUS, Karl-Johan GOMBRII, Frode RINGDAL
PART I - ORGANIZATION OF THE CMI

Member Associations

PAKISTAN

PAKISTAN MARITIME LAW ASSOCIATION

C/o Khursheed Khan & Associates
305 Amber Estate, Shahrah-e-Faisal
Karachi 75350 – Pakistan
Tel.: +92 21 453.3665/453.3669 – Fax: +92 21 454-9272/453.6109
E-mail: attorney@super.net.pk – Cable: MARITIME

Established: 1998

Officers:

President: Zulfiqar Ahmad KHAN, C/o Khursheed Khan & Associates, 305 Amber Estate, Shahrah-e-Faisal, Karachi 75350, Pakistan. Tel.: +92 21 453.3665/453.3669 – Fax: +92 21 454-9272/453.6109 – E-mail: attorney@super.net.pk
Secretary: Iftikhar AHMED
Treasurer: Zainab HUSAIN

PANAMA

ASOCIACION PANAMENA DE DERECHO MARITIMO
(Panamanian Maritime Law Association)
P.O. Box 55-1423
Paitilla, Republic of Panama
Tel.: +507 265.8303/04/05 – Fax: +507 265.4402/03
E-mail: apdm@abalaw.net

Established: 1978

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ASOCIACIÓN PERUANA DE DERECHO MARITIMO
(Peruvian Maritime Law Association)
Jr. Federico Recavarren 131 - Of. 404 - Miraflores - Lima 18 - PERU
Tels.: +51 1 242.0138 / 241.8355 – Fax: +51 1 445.9596
E-mail: andespacific@terra.com.pe

Established: 1977

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Dr. Ricardo CANO, Jr. Federico Recavarren 131, Of. 404, Miraflores, Lima 18. Tels.: +51 1 242.0138/241.8355 – Fax: +51 1 445.9596 – E-mail: andespacific@terra.com.pe
Treasurer:
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PART I - ORGANIZATION OF THE CMI

Member Associations

PHILIPPINES

MARITIME LAW ASSOCIATION OF THE PHILIPPINES (MARLAW)
c/o Del Rosario & Del Rosario
15F, Pacific Star Bldg., Makati Ave. corner Gil Puyat Ave.,
1200 Makaty City, Philippines
Tel.: +63 2 810.1791 – Fax: +63 2 817.1740
E-mail: ruben.delrosario@delrosariolaw.com

Established: 1981

Officers:

President: Ruben T. DEL ROSARIO
Executive Vice-President: Diosdado Z. RELOJ, Jr. Reloj Law Office, 9th Fl., Ermita Center Bldg., Roxas Boulevard, Manila, Philippines. Tel.: +63 2 505.196/521.6922 – Fax: +63 2 521.0606
Vice-President: Pedro L. LINSANGAN, Linsangan Law Office, 6th Fl., Antonino Bldg., T.M. Kalaw Street, Ermita Manila, Philippines. Tel.: +63 2 594.062 – Fax: +63 2 521.8660
Vice-President for Visayas: Arturo Carlos O. ASTORGA, Astorga Macamay Law Office, Room 310, Margarita Bldg., J.P. Rizal cor. Cardona Street, Makati, Metro Manila, Philippines. Tel.: +63 2 874.146 – Fax: +63 2 818.8998
Treasurer: Aida E. LA YUG, Fourwinds Adjusters Inc., Room 402, FHL Building, 102 Aguirre Street, Legaspi Village, Makati, Metro Manila, Philippines. Tel.: +63 2 815.6380
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POLSKIE STOWARZYSZENIE PRAWA MORSKIEGO
z siedzibą w Gdyni (Polish Maritime Law Association, Gdynia)
c/o Gdynia Marine Chamber, Pl. Konstytucji 5, 81-369 Gdynia, Poland
Tel. +48 58 620.7315 – Fax +48 58 621.8777

Established: 1934

Officers:

President: Prof. dr hab. juris Jerzy MIYNNARCZYK, Gdańsk University, Head of Maritime Law Department, c/o Andersa 27, 81-824 Sopot, Poland. Tel.:+48 58 551.2034, 550.7624 – Fax +48 58 550.7624, 551.3002 – E-mail: jmpprawo@gd.onet.pl
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Witold KUCZORSKI, President of Marine Chamber, Gdynia
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MINISTERIO DA DEFESA NACIONAL – MARINHA
COMISSÃO DE DIREITO MARITIMO INTERNACIONAL
(Committee of International Maritime Law)
Praça do Comercio, 1188 Lisboa Codex
Fax: +351 1 342.4137

Established: 1924

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RUSSIAN FEDERATION

ASSOCIATION OF INTERNATIONAL MARITIME LAW
OF THE COMMONWEALTH
OF INDEPENDENT STATES (C.I.S.)
6, B. Koptevsky pr., 125319 Moscow
Tel.: +7 95 151.7588, 151.2391, 151.0312 – Fax: +7 95 151.7588, 152.0916
E-mail: smniip@ntl.ru

Established: 1968

Officers:
President: Prof. Anatoly L. KOLODKIN, Deputy Director-General, State Scientific-Research and Project Development Institute of Merchant Marine, “Soyuzmorniiproekt”, President Russian Association of International Law, Moscow
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Member Associations

Dr. Oleg V. BOZRIKOV, Deputy head of the Department of Marine Transport, Ministry of Transport of the Russian Federation, Moscow
Mrs. Olga V. KULISTIKOVA, Head of the International Private Maritime Law Department, “Soyuzmorniiiproekt”, Moscow
Prof. Sergey N. LEBEDEV, Chairman of the Maritime Arbitration Commission, Russian Federation, Moscow
Mr. Vladimir A. MEDNIKOV, Advocate, Legal Consultation Office “Jurinflot”, Moscow
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SENEGAL

ASSOCIATION SENEGALAISE DE DROIT MARITIME
(Senegalese Maritime Law Association)
Head Office: 31, Rue Amadou Assane Ndoye, Dakar 73
Secretariat: Port Autonome de Dakar,
B.P. 3195 Dakar, Senegal
Tel.: +221 823.6548 – Fax: +221 822.1033
E-mail: asdam@cooperation.net

Established: 1983

Bureau Provisoire

President: Dr Aboubacar FALL
Président honoraire : Pr Ibrahima Khalil DIALLO
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Pr Ibrahima Khalil DIALLO, Dr Aboubacar FALL
SINGAPORE

THE MARITIME LAW ASSOCIATION OF SINGAPORE
20 Maxwell Road, 04-01G Maxwell House, SINGAPORE 069113
Tel.: +65 223.4747 – Fax: +65 223.5055

Established: 1992

Officers:

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Vice-President: Nicholas SANSON
Secretary: Teh Kee Wee LAWRENCE
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Committee Members: Frederick J. FRANCIS, Gan Seng CHEE, Leong Kah WAH, Mohan SUB-BARAMAN
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SLOVENIJA

DRUŠTVO ZA POMORSKO PRAVO SLOVENIJE
(Maritime Law Association of Slovenia)
c/o University of Ljubljana, Faculty of Maritime Studies and Transport
Pot pomorščakov 4, SI 6320 Portorož, Slovenia
Tel.: +386 5 676.7100 – Fax: +386 5 676.7130
E-mail: mlas@fpp.edu – Website: www.mlas.fpp.edu

Established: 1993

Members of the Executive Board:

President: Prof. Dr. Marko PAVLIHA, University of Ljubljana, Faculty of Maritime Studies and Transportation, Pot pomorščakov 4, 6320 Portorož, Slovenia. Tel.: +386 5 676.7100 – Fax: +386 5 676.7130 – E-mail: marko.pavliha@fpp.edu
Vice President: Andrej PIRS M.Sc., Liminjanska 2, 6320 Lucija, Slovenia. Tel.: +386 5 677.1688 – Fax: +386 5 676.7130
Secretary General: M.Sc. Mitja GRBEC, LL.M., Sv. Peter 142, 6333 Sečovlje, Slovenia. Tel.: +386 41 846.378 – Fax: +386 1 436.3431 – E-mail: mgrbec74@yahoo.com - mitja.grbec@fersped.si
Treasurer: Sinisa LAVRINCEVIC, M.Sc., Hrasce 117, 6230 Postojna, Slovenia. Tel.: +386 5 753.5011 – Mobile: +386 31 603.578 – E-mail: sinisa.lavrinevic@sava-re.si
Members:
Patrick VLAČIĆ, M.Sc., University of Ljubljana, Faculty of Maritime Studies and Transportation, Pot pomorščakov 4, 6320 Portorož, Slovenia. Tel.: +386 5 6767.214 – Fax: +386 5 6767.130 – E-mail: patrick.vlacic@fpp.edu
Capt. Tomaz Martin JAMNIK, Logodi utca 34a/III, H – 1012 Budapest, Tel.: +36 1 2120.000 – Fax: +36 1 2120.001 – Mobile: +386 51 320.803 – E-mail: lukakp@axelero.hu

Titular Members:
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THE MARITIME LAW ASSOCIATION
OF THE REPUBLIC OF SOUTH AFRICA

All correspondence to be addressed to the Secretariat:
James MACKENZIE, Shepstone & Wylie,
International Trade & Transport Dept., 5th Floor, 2 Long Street, Cape Town, 8000.
Tel.: +27 21 419.6495 – Fax: +27 21 418.1974 – Mobile: 27-82-460.4708
E-mail: mackenzie@wylie.co.za

Established: 1974

Officers:

President: John DYASON, Findlay & Tait (The Cape Town office of Bowman Gilfillan Inc.), 18th Floor SA Reserve Bank Building, 60 St George’s Mall, Cape Town, 8001, PO Box 248, Cape Town, 8000, DX 29, Cape Town. Tel.: +27 21 480 7813 – Fax: +27 21 424.1688 – Mobile: 27-82-806.6013 – E-mail: jdyason@cpt.bowman.co.za

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Secretary James MACKENZIE, Shepstone & Wylie, International Trade & Transport Dept., 5th Floor, 2 Long Street, Cape Town, 8000. Tel.: +27 21 419.6495 – Fax: +27 21 418.1974 – Mobile: 27-82-460.4708 – E-mail: mackenzie@wylie.co.za

Treasurer: Tim MCCLURE, Island View Shipping, 73 Ramsay Ave, Berea, Durban, 4001, PO Box 30838, Mayville, 4058. Tel.: +27 31 207.4491 – Fax: +27 31 207.4580 – Mobile: 27-83-251.4971 – E-mail: timmcclure@iafrica.com

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Andrew CLARK, Adams & Adams, 7 Nollsworth Crescent, Nollsworth Park, La Lucia Ridge Office Estate, La Lucia, 4320. Tel.: +27 31 566.1259 – Fax: +27 31 566.1267 – Mobile: 27-82-924.3948 – E-mail: andrew@adamsadams.co.za

Andrew ROBINSON, Denyes Reitz, 4th Floor, The Marine, 22 Gardiner Street, Durban, 4001, PO Box 2010, Durban, 4000, DX 90, Durban. Tel.: +27 31 367.8800 – Fax: +27 31 305.1732 – Mobile: 27-31-83-452.7723 – E-mail: apmr@denyesreitz.co.za

Angus STEWART, Advocates Bay Group, 12th Floor, 6 Durban Club Place, Durban, 4001, DX 376, Durban. Tel.: +27 31 301.8637 – Fax: +27 31 305.6346 – E-mail: stewart@law.co.za

Clare B. NEL, Safmarine, 18th Floor, Safmarine House, 22 Riebeek Street, Cape Town, 8001, PO Box 27, Cape Town, 8000. Tel.: +27 31 408.6502 – Fax: +27 31 408.6320 – Mobile: 27-83-798.6502 – E-mail: cnel@za.safmarine.com

Mike WRAGGE, Huguenot Chambers, 40 Queen Victoria Street, Cape Town, 8000, Tel.: +27 31 423.4389 – Fax: +27 31 424.1821 – E-mail: michaelw@netactive.co.za
SPAIN

ASOCIACIÓN ESPAÑOLA DE DERECHO MARÍTIMO
(Spanish Maritime Law Association)
c/o Dr. Ignacio Arroyo Martínez, Paseo de Gracia 92,
08008 Barcelona – Tel.: +34 93.487.11.12 – Fax: +34 93.487.35.62
E-mail: rya@rya.es – Web: http://www.rya.es

Established: January, 1949

Officers

President: Ignacio ARROYO MARTÍNEZ Paseo de Gracia 92, 08008 Barcelona,
Tel.: +34 93.487.11.12, Fax: +34 93.487.35.62, e-mail: rya@rya.es

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E-mail: gabaldon@der-pr.uc3m.es

Ricardo VIGIL TOLEDO, Tribunal de Justicia de la Comunidad Andina, President, Av. Roca 450 y Av. 6 de Diciembre, Apdo. Postal 17-07-9054 Quito (Ecuador) –
E-mail: vigiltoldeo@msn.com

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P.O. Box 3299, SE-103 66 Stockholm  
(Visiting address: Sveavägen 31, SE-111 34 Stockholm)  
Tel.: +46 8 58705100 – Fax: +46 8 58705120  
E-mail: info@morssingnycander.se

**Officers**

*President:* Lars BOMAN, Partner, Advokatfirman Morssing & Nycander AB, P O Box 3299, SE-103 66 Stockholm. Tel.: +46 8 58705100 – Fax: +46 8 58705120 – E-mail: lars.boman@morssingnycander.se  
*Treasurer:* Stefan BROCKER, Mannheimer Swartling Advocatbyrå AB, P O Box 2236, SE-403 14 Göteborg. Tel.: +46 31 355.1600 – Fax: +46 31 355.1601 – E-mail: sbr@msa.se

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(Swiss Association of Maritime Law)  
c/o Cécile Hess-Meister, Credit Suisse Ship Finance  
St. Alban Graben 1-3, CH 4002 Basel  
Tel.: +41 61 266.7712 - Fax: +41 61 266.7939  
E-mail: cecile.hess-meister@credit-suisse.com

**Established:** 1952

**Officers:**

*President:* Dr. Alexander von ZIEGLER, Postfach 6333, Löwenstrasse 19, CH-8023 Zürich.  
Tel.: +41 1 215.5252 – Fax: +41 1 215.5200 – E-mail: alexander.vonziegler@swlegal.ch  
*Secretary:* Cécile HESS-MEISTER, avocate secrétaire, St. Alban Graben 1-3, CH 4002 Basel. Tel.: +41 61 266.7712 – Fax: +41 61 266.7939  
E-mail: cecile.hess-meister@credit-suisse.com
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Dr. Thomas BURCKHARDT, Lic. Stephan CUENI, Jean HULLIGER, Dr. Alexander von ZIEGLER

Membership:
70

TURKEY
DENIZ HUKUKU DERNEGI
(Maritime Law Association of Turkey)
Istiklal Caddesi Korsan Çikmazi Saadet Apt.
Kat. 2 D. 3-4, Beyoglu, Istanbul
Tel.: +90 212 249.8162 – Fax: +90 212 293.3514

Established: 1988

Officers:
President: Prof. Dr. Rayegan KENDER, I.U. Law Faculty, Main Section of Maritime Law, Beyazit/Istanbul. Tel./Fax: +90 216 337.05666
Vice-Presidents:
Av. Hucum TULGAR, General Manager of Turkish Coastal Safety and Salvage Organization. Tel.: +90 212 292.5260/61 – Fax. +90 212 292.5277
Av. Gündüz AYBAY, Siraselviler Cad. No. 87/8, Cihangir/Taksim/Istanbul. Tel.: +90 212 293.6744 – Fax: +90 212 244.2973
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The Other Members of the Board:
Av. Sadik ERIS, Chief Legal Advisor of General Manager of Turkish Coastal Safety and Salvage Organization. Tel. +90 212 292.5272 – Fax: +90 212 292.5277
Doç. Dr. Samim ÜNAN, I.U. Law Faculty, Main Section of Maritime Law, Beyazit/Istanbul. Tel.: +90 212 514.0301 – Fax: +90 212 512.4135
Asst. Prof. Dr. Kerim ATAMER, Istanbul Bilgi University, Faculty of Law, Kurtulus Dereesi Caddesi No. 47, TR-34440 Dolapdere-Istanbul. Tel.: +90 212.2381010, ext. 270 – Fax: +90 212.2976315 – E-mail: katamer@bilgi.edu.tr

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PART I - ORGANIZATION OF THE CMI

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UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND

BRITISH MARITIME LAW ASSOCIATION

 c/o Ince & Co.
 Mr. Patrick Griggs
 International House, 1 St. Katharine’s Way
 London, E1W 1UN, United Kingdom
 Tel.: +44 20 7551.5233 or +44 20 7623.2011 – Fax: +44 20 7623.3225 –
 E-mail: p.griggs@incelaw.com

Established: 1908

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THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

c/o Lizabeth L. BURRELL, President, c/o Curtis, Mallet-Prevost, Colt & Mosle LLP,
101 Park Avenue, New York, NY 10178-0016
Tel.: (direct) +1 212 696.6995 (general) +1 212 696.6000
Fax: (direct) +1 917 368.8995 (general) +1 212 695.1559
E-mail: lburrell@cm-p.com

Established: 1899

Officers:

President: Lizabeth L. BURRELL, c/o Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, NY 10178-0016 – Tel.: (direct) +1 212 696.6995 (general) +1 212 696.6000 – Fax: (direct) +1 917 368.8995 (general) +1 212 695.1559 – E-mail: lburrell@cm-p.com
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Second Vice-President: Patrick J. BONNER, Freehill, Hogan & Mahar, 80 Pine Street, New York, NY 10005-1759. Tel.: +1 212 425.1900 – Fax: +1 212 425.1901 E-mail: bonner@freehill.com
Immediate Past-President: Thomas S. RUE, Johnstone Adams Bailey Gordon & Harris LLC, Royal St. Francis Bldg, 104 Saint Francis St. 8th Floor, Mobile, AL 36602. Tel.: +1 251 432.7682 – Fax: +1 251 432.2800 – E-mail: tsr@johnstoneadams.com
Treasurer: Robert G. CLYNE, 45 Broadway, Suite 1500, New York, New York 10006-3739. Tel.: +1 212 669.0600 – Fax: +1 212 669.0698 – E-mail: rclyne@hillrivkins.com
Secretary: James W. BARTLETT, III, Semmes, Bowen & Semmes, 250 West Pratt Street, 16th Floor, Baltimore, MD 21201-2423. Tel.: +1 410 539.5040 – Fax +1 410 539.5223 – E-mail: jbartlett@semmes.com
Membership Secretary: Philip A. BERN, 2607 Savannah Springs Avenue, Henderson, NV 89052. Tel.: +1 702 361.9010 – Fax +1 702 897.1170 – E-mail: pbern@earthlink.net

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URUGUAY
ASOCIACION URUGUAYA DE DERECHO MARITIMO
(Maritime Law Association of Uruguay)
Rambla 25 de Agosto 580 – 11000 Montevideo, Uruguay
Tel.: +598 2 915.6765 – Fax: +598 2 916.4984
E-mail: audm@adinet.com.uy

Established: 1985

Officers:
President: Dr. Gabriela VIDAL, Tel.: +598 2 9163661/62 – E-mail: drvidal@adinet.com.uy
Vice-President: Dr. Carlos DUBRA, Tel.: +598 2 9150427
Secretary: Cap. Ricardo CUSTODIO, Tel.: +598 2 9165754/+598 2 901968 –
E-mail: rcustodio@adinet.com.uy
Vice-Secretary: Cap. Julio MONTANES, Tel.: +598 2 9152918/+598 2 9169453 –
E-mail: msgroup@adinet.com.uy
Treasurer: Ing. Agr. Emilio OHNO, Tel.: +598 2 9164092/+598 2 6019236 –
E-mail: eiohno@netgate.com.uy
Vice-Treasurer: Dr. Nicolas MALTACH, Tel.: +598 2 9082841 – E-mail: nmaltach@adinet.com.uy
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ASOCIACION VENEZOLANA DE DERECHO MARITIMO
(Comité Marítimo Venezolano)
Av. Libertador, Multicentro Empresarial del Este
Torre Libertador, Núcleo B, Piso 15, Oficina B-151
Chacó - Caracas, 1060, Venezuela
Tel.: +58 212 2659555/2674587 – Fax: +58 212 2640305
E-mail: avdmar@cantv.net

Established: 1977

Officers:

President: Freddy BELISARIO-CAPELLA, Tel./Fax +58 212 943.5064 – Mobile/Cellular
Phone: +58 414 301.6503 – E-mail: coquitos@cantv.net

Council of former Presidents:
Luis COVA-ARRIA, Tel.: (58-212) 265.9555 – Fax: +58 212 264.0305 – Mobile/Cellular
Phone: +58 416 621.0247 – E-mail: LuisCovaA@cantv.net

Armando TORRES-PARTIDAS, Tel./Fax +58 212 577.1753
Wagner ULLOA-FERRER, Tel.: +58 212 864.7686-864.9302 – Fax: +58 212 864.8119
Julio ALVAREZ-LEDO, Tel.: +58 212 662.6125-662.1680 – Fax: +58 212 693.1396

Omar FRANCO-OTTAVI, Tel.: +58 212 762.6658-762.9753 – Fax: +58 212 763.0454

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Alternative Secretary General: Patricia MARTINEZ SOUTO, Tel.: +58 212 265.9555 – Fax: +58 212 264.0305 – E-mail: LuisCovaA@cantv.net

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E-mail: attorneys@iconnect.co.ke

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University of Latvia, Faculty of Law
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Barrister at Law, Hon. Secretary of the British Maritime Law Association, Adwell House, Tetsworth, Oxfordshire OX9 7DQ, United Kingdom. Tel.: (1844) 281.204 - Fax: (1844) 281.300

Gerold HERRMANN
United Commission on International Trade Law, Vienna International Centre, P.O. Box 500, A-1400 Vienna, Austria. Fax (431) 260605813

His Honour Judge Thomas MENSAH
Dr., Judge of the Tribunal for the Law of the Sea, 50 Connaught Drive, London NW11 6BJ, United Kingdom. Tel.: (20) 84583180 - Fax: (20) 84558288 - E-mail: tamensah@yahoo.co.uk

The Honourable William O’NEIL
2 Deanswood Close, Woodcote, Oxfordshire, England RE8 0PW

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Mitsuo ABE
Attorney at Law, Member of the Japanese Maritime Arbitration, c/o Abe Law Firm, 1-3-8-407 Hirakawa-Cho, Chiyoda-ku, 102-0093, Tokyo, Japan. Tel.: (81-3) 5275.3397 - Fax: (81-3) 5275.3398 - E-mail: abemitu@law.ne.jp

Christos ACHIS
General Manager, Horizon Insurance Co., Ltd., 26a Amalias Ave., Athens 118, Greece

Eduardo ALBORS MÉNDEZ
Lawyer, c/o Albors, Galiano & Co., c/ Velásquez, 53-3° Dcha, 28001 Madrid, Spain. Tel.: (91) 435.6617 - Fax: (91) 576.7423 - Tlx: 41521 ALBEN

Hans-Christian ALBRECHT
Advocate, Weiss & Hasche, President of the Deutscher Verein für Internationales Seerecht, Valentinskamp 88, 20354 Hamburg, Deutschland
José M. ALCANTARA GONZALEZ
Maritime lawyer in Madrid, Director of the Law firm AMYA, Arbitrator, Average Adjuster, President of the Spanish Maritime Law Association, Executive Vice-President of the Spanish Association of Maritime Arbitration, Past President of the Iberoamerican Institute of Maritime Law. Office: Princesa, 61, 28008 Madrid, Spain. Tel.: +34 91 548.8328 - Fax: +34 91 548.8256 - E-mail: jmalcantara@amya.es

Mme Pascale ALLAIRE BOURGIN
CAMAT, 9 rue des Filles-St. Thomas, 75083 Paris-Cedex 02, Belgique

Tulio ALVAREZ LEDO
Doctor of Law, Lawyer and Professor, partner of Law Firm Alvarez & Lovera, Past President of the Asociacion Venezolana de Derecho Maritimo, Centro Comercial Los Chaguaramos, Unica Torre, Piso 9, Ofic. 9-11, Los Chaguaramos, Caracas, Venezuela. Tel.: (58-212) 693.9791 - Fax: (58-212) 693.7085 - E-mail: tulioalvarezledo@hotmail.com

Charles B. ANDERSON
President, Anchor Marine Claims Services Inc. (U.S. general correspondents for Assur- anceforeningen Skuld), 900 Third Avenue, New York, NY 10022-4728, U.S.A.. Tel.: (212) 758.9200 - Fax: (212) 758.9935 - E-mail: nyc@anchorclaims.com

Constantinos ANDREOPoulos
Lawyer, General Secretary of the Hellenic Maritime Law Association, 8, Kiou Str., 166 73 Ano Voula, Greece

Juan A. ANDUIZA
Haight, Gardner, Holland & Knight, 195 Broadway, New York 10007, N.Y., USA. Tel.: (212) 513.3311 - Fax: (212) 385.9010 - E-mail: jandui@hklaw.com

W. David ANGUS, Q.C.
Past-President of the Canadian Maritime Law Association, Member of the Executive Council of CMI, Partner, Stikeman Elliott, 1155 René-Lévesque Blvd. West, Suite 4000, Montreal, Quebec H3B 3V2, Belgique. Tel.: (514) 397.3127 - Fax : (514) 397.3208 - E-mail: dangus@stikeman.com

Armando ANJOS HENRIQUES
Avocat, Membre de la Commission Portugaise de Droit Maritime (Ministère de la Marine), Professeur de Droit Maritime à l'Ecole Nautique de Lisbonne, Av.a Elias Garcia, 176-2.o esq., 1000 Lisboa, Belgique. Tel.: (1) 796.0371

Anthony M. ANTAPASSIS
Advocate, Associate Professor of Commercial and Maritime Law, Faculty of Law, University of Athens, President of the Hellenic Maritime Law Association, 10 Akti Poseidonos, 185 31 Piraeus, Greece. Tel.: (1) 422.5181 - Fax: (1) 422.3449 - E-mail: antalblaw@ath.forthnet.gr

José M. APOLO
Maritime Attorney, Bachellor in International Sciences in Ecuador, Executive President of the firm Estudio Juridico Apolo & Asociados S.A., Maritime & Port Group, President of the Ecuadorian Association of Maritime Studies and Law “ASEDMAR”, Vice-President for Ecuador of the Iberoamerican Institute of Maritime Law, Vélez 513, 6th and 7th Floor, “Acropolis” Building, Guayaquil, Ecuador. P.O. Box. 3548. Tel.: 593 (4) 320.713/4 - Fax: 593 (4) 322.751
Francisco ARCA PATINOS
Lawyer, Member of the Executive Committee of the Peruvian Maritime Law Association, Trinidad Moran, 1235, Lima 14, Peru

Ignacio ARROYO
Advocate, Ramos & Arroyo, Professor at the University of Barcelona, General Editor of “Anuario de Derecho Maritimo”, Paseo de Gracia 92, 08008 Barcelona 8, Spain. Tel.: (93) 487.1112 - Fax (93) 487.3562 - E-mail: ramosyarroyo@bcn.servicom.es

David ATTARD
Professor, Director of International Maritime Law Institute, P O Box 31, Msida, MSD 01, Malta. Tel.: (356) 310814 - Fax: (356) 343092 - E-mail: directorimli@maltanet.com

Paul C. AVRAMEAS
Advocate, 133 Filonos Street, Piraeus 185 36, Greece. Tel.: (1) 429.4580 - Tlx: 212966 JU-RA GR - Fax: (1) 429.4511

Eduardo BAGES AGUSTI
Nav. Maersk España, Plaza Pablo Ruiz Picasso, s/n, Torre Picasso, 28020 Madrid, Spain. Tel.: (91) 572.4100 - Fax: (91) 572.4177

Nicola BALESTRA
Avocate, Piazza Corvetto 2-5, 16122 Genova, Italy. Tel.: (010) 889.252 - Fax: (010) 885.259 - E-mail: bovlaw@panet.it

José Manuel BAPTISTA DA SILVA
Lawyer, Member of “Ordem dos Advogados”, Assistant of Commercial law at Law School of the University of Lisbon (1979/1983), Assistant of Maritime Law at Seminars organized by the Portuguese Association of Shipowners, Legal adviser at “Direcçao General de Marinha”, Legal adviser to the Portuguese delegation at the Legal Committee of I.M.O., member of “Comissao do Direito Maritimo Internacional”, R. Vitor Cordon, 1-4º Esq., 1200 Lisboa, Portugal. Tel.: (351) 21 346.3393/21 346.5652 - Fax: (351) 21 342.4721

Mario Ferreira BASTOS RAPOSO
Lawyer, Dean of “Ordem dos Advogados” (1975/1977), Vice-Chairman of “Uniao Internacional dos Advogados” (1976/1978), Member of “Conselho Superior do Ministério Público” (1977/1978), Minister of Justice in former Governments, Member of the Parliament (1979/1981/1983), Member of “Secção de Direito Maritimo e Aéreo da Associação Jurídica” (1964), Member of “Associação Portuguesa de Direito Maritimo” (1983), Chairman of “Comissao Internacional de Juristas Secção Portuguesa”, R. Rodrigo da Fonseca, 149-1º Dto, 1070-242 Lisboa, Portugal. Tel.: (351) 21 382.6200/08 - Fax: (351) 21 382.6209

Stuart N. BEARE
24, Ripplevale Grove - London N1 1HU, United Kingdom - Tel: +44 20 7609.0766 - E-mail: stuart.beare@btinternet.com

Freddy BELISARIO-CAPELLA
Venezuelan lawyer, Master in Admiralty Law Tulane University, U.S.A., Professor in Maritime Law in the Central University of Venezuela, VMLA’s Director, Calle San Juan, Quinta Coquito, Sorocaima, La Trinidad, Caracas, Venezuela. Tel.: (58-212) 943.5064 - Mobile/Cellular Phone: (58-414) 301.6503 - E-mail: coquitos@cantv.net
Titulary Members

Jorge BENGOLEA ZAPATA
Abogado, Professor Titular de Derecho de la Navegacion en la Facultad de Derecho y Ciencias Sociales de la Universidad de Buenos Aires, Professor de Derecho Maritimo y Legislacion Aduanera en la Facultad de Ciencias Juridicas de la Plata, Corrientes 1309, 7° p. of.19, Buenos Aires, Argentina

Francesco BERLINGIERI
O.B.E., Advocate, President ad Honorem of CMI, former Professor at the University of Genoa, doctor of law honoris causa at the Universities of Antwerp, Athens and Bologna, President ad Honorem of the Italian Maritime Law Association, 10 Via Roma, 16121 Genova, Italia. Tel.: (010) 586.441 - Fax: (010) 594.805 - E-mail: slb@dirmar.it

Giorgio BERLINGIERI
Advocate, President of the Italian Maritime Law Association, 10 Via Roma, 16121 Genova, Italia. Tel.: (010) 586.441 - Fax: (010) 594.805 - E-mail: presidenza@aidim.org

Michael J. BIRD
Bull, Housser & Tupper, 3000 Royal Centre, 1055 West Georgia Street, Vancouver BC V6E 3R3 Canada. Tel.: (604) 641.4970 - Fax: (604) 646.2641 - E-mail: mjbird@bht.com

Miss Giorgia M. BOI
Advocate, Professor at the University of Genoa, Via XX Settembre 26/9, 16121 Genova. Tel./Fax: (+39) 010 8682434

Philippe BOISSON
Docteur en droit, Secrétaire Général de l’Association Française du Droit Maritime, Conseiller Juridique Bureau Veritas, 17 bis Place des Reflets, Cedex 44, F-92077 Paris-La-Défense, Belgique. Tel.: (1) 429.152.71 - Fax: (1) 429.152.98

Lars BOMAN
Lawyer, President of the Swedish Maritime Law Association, Partner in Law Firm Morsing & Nycander AB, P.O.Box 3299, SE-103 66 Stockholm, Sweden. Tel.: +46 8 587.05100 - Fax: +46 8 587.05120 - E-mail: lars.boman@morssingnycander.se

Pierre BONASSIES
Professeur (H) à la Faculté de Droit et de Science Politique d’Aix-Marseille, 7, Terasse St Jérome, 8 avenue de la Cible, 13100 Aix-en-Provence. Tel.: (4) 42.26.48.91 - Fax: (4) 42.38.93.18

Franco BONELLI
Advocate, Professor at the University of Genoa, Viale Padre Santo 5/8, 16122 Genova, Italy. Tel.: (010) 831.8341 - Fax: (010) 813.849 - E-mail: franco.bonelli@beplex.com

Lawrence J. BOWLES
Partner of law firm Nourse & Bowles, LLP, One Exchange Plaza, 55 Broadway, New York, New York 10006, U.S.A. - Tel.: (212) 952.6200 - Fax: (212) 952.0345 - E-mail: lbowles@nb-ny.com

Sjur BRAEKHUS
Professor of Maritime Law at the University of Oslo, Former President of the Norwegian Maritime Law Association, Nordisk Institutt for Sjørett, University of Oslo, Karl Johansgate 47, N-0162 Oslo, Norway. Tel.: (2) 429.010 - Fax: (2) 336.308
Titular Members

David BRANDER-SMITH Q.C.
Bull, Housser & Tupper, 3000 Royal Centre, P.O.Box 11130, 1055 West Georgia Street, Vancouver B.C., Canada V6E 3R3. Tel.: (604) 687.6575, direct line (604) 641.4889 - Tlx: 04-53395 - Fax: (604) 641.4949

Hartmut von BREVERN
Attorney at Law, partner in Remé Rechtsanwälte, former President of the German Maritime Arbitrators Association, Ballindamm, 26, 20095 Hamburg, Deutschland. Tel.: (40) 321783 - Fax: (40) 327569 - E-mail: h.brevern@remelegal.de

Tom BROADMORE
Past President of the Maritime Law Association of Australia and New Zealand. Barrister, PO Box 168, Wellington, New Zealand. Tel.: +64 4 499.6639 - Fax: +64 4 499.2323 - E-mail: tom.broadmore@waterfront.org.nz

Claude BUISSERET
Avocat, Ancien Président de l’Association Belge de Droit Maritime, Professeur à l’Université Libre de Bruxelles, Louizastraat 32 bus 1, B-2000 Antwerpen 1, Belgique. Tel.: (3) 231.1714 - Fax: (3) 233.0836

Thomas BURCKHARDT
Docteur en droit et avocat, LL.M., (Harvard), juge suppléant à la Cour d’appel de Bâle, Holliger Simonius & Partner, Aeschenvorstadt 67, CH-4010 Basel, Suisse. Tel.: (61) 2064.545 - Fax: (61) 2064.546 - E-mail: burckhardt@advokaten.ch

Lizabeth L. BURRELL
Levy Phillips & Kronigsberg LLP, 520 Madison Avenue, New York, New York 10022, Tel.: (212) 605.6273 - Fax: (212) 605.6290 - E-mail: lburrell@lpklaw.com

Pedro CALMON FILHO
Lawyer, Professor of Commercial and Admiralty Law at the Law School of the Federal University of Rio de Janeiro, President of the Brazilian Maritime Law Association, Pedro Calmon Filho & Associados, Av. Franklin Roosevelt 194/8, 20.021 Rio de Janeiro, Brasil. Tel.: (21) 220.2323 - Fax: (21) 220.7621 - Tlx: 2121606 PCFA BR

John A. CANTELLO
Insurance broker and average adjuster, Osborne & Lange Inc., 240 St. Jacques Street West, Suite 300, Montreal, Quebec H2Y 1L9. Tel.: (514) 849.4161 - Fax: (514) 849.4167 - E-mail: jcantello@osborn-lange.com

Alberto C. CAPPAGLI
Lawyer, Vice-President of the Argentine Maritime Law Association, Partner of Marval, O’Farrell & Mairal, Leandro N. Alem 928, (1001) Buenos Aires, Argentina. Tel.: (11) 4310.0100 - Fax: (11) 4310.0200 - E-mail: acc@marval.com.ar

Artur R. CARBONE
Escrítorio Jurídico Carbone - Av. Rio Branco, 99 - 4º andar , Rio de Janeiro, CEP 20040-004 RJ-Brasil. Tel.: (21) 253.3464 - Fax: (21) 253.0622 - E-mail: ejc@carbone.com.br

Sergio M. CARBONE
Avocat, Professeur à l’Université de Gênes, Vice-President of the Italian Maritime Law Association, Via Assarotti 20, 16122 Genova, Italia. Tel.: (010) 810.818 - Fax: (010) 870.290 - E-mail: smcarbon@tin.it
Kenneth J. CARRUTHERS
The Hon. Mr Justice Kenneth Carruthers, Judge in Admiralty, Supreme Court of New South Wales, Former President of the Maritime Law Association of Australia and New Zealand, Judges Chambers, Supreme Court, Queen’s Square, Sydney 2000, Australia. Tel.: (2) 230.8782 - Fax: (2) 230.8628

Giorgio CAVALLO
Average Adjuster, Via Ceccardi 4/26, 16121 Genoa, Italy. Tel.: (010) 562623 - Fax: (010) 587259 - E-mail: studiocavallo@split.it

Diego Esteban CHAMI
PhD in Law from the University of Buenos Aires. Maritime Law Professor at the University of Buenos Aires Law School (www.comission311.com.ar). Pro-Treasurer of the Argentine Maritime Law Association, Senior Partner of Estudio Chami-Di Menna y Asociados, Libertad N° 567, 4th Floor, 1012 Buenos Aires, Argentina. Tel.: +54 11 4382.4060 – Fax +54 11 4382.4243 - E-mail: diego@chami-dimenna.com.ar; www.chami-dimenna.com.ar

George F. CHANDLER, III
Advocate, Partner in Hill Rivkins & Hayden LLP, 712 Main Street, Suite 1515, Houston, Texas 77002-3209, U.S.A.. Tel.: (713) 222.1515 - Fax: (713) 222.1359 - Mobile: (713) 398.7714 - E-Mail: gchandler@hillrivkins.com

Michael Marks COHEN
Nicoletti Hornig Campise & Sweeney, Wall Street Plaza, 88 Pine Street, New York, NY 10005-1801, Tel.: (212) 220.3830 - Fax: (212) 220.3780 - E-mail: mcohen@nhcslaw.com

Guilherme George CONCEICAO SILVA

Hon. Justice Richard E. COOPER
Bachelor of Laws University of Queensland (1969), Master of Laws University of Queensland (1979), Appointed Queens Counsel 1982, Judge of the Supreme Court of Queensland 1989-1992, Judge of the Federal Court of Australia 1992, Governor United Nations IMO, World Maritime University, Malmo, Sweden 1997, Federal Court of Australia, Level 6, Commonwealth Law Courts, 119 North Quay, Brisbane, QLD 4000, Australia. Tel.: (7) 3248.1150 - Fax: (7) 3248.1264 - E-mail: recooper@fedcourt.gov.au

Eugenio CORNEJO FULLER
President, Asociacion fici de Derecho Maritimo, Honorary Vice-President of the C.M.I., Prat 827, Piso 12, Casilla 75, Valparaiso, Chile. Fax: (32) 25.26.22

Eugenio CORNEJO LACROIX
Lawyer, Average Adjuster and Professor of Maritime Law and Insurance, c/o Ansieta, Cornejo & Guzmán, Huérfanos 835, Of. 1601, Santiago, Chile. Tel.: (2) 633.2589 - Fax (2) 638.2614

Luis CORREA-PÉREZ
Av. Abraham Lincoln c/calle El Colegio, Edif. Provincial, p./2, Ofic. 2-F, Sabana Grande, Caracas, Venezuela. Tel.: (58-212) 762.4949/5287 - Fax: (58-212) 761.5648 - E-mail: scort@telcel.net.ve
Titulary Members

Luis COVA ARRÍA
Lawyer, Luis Cova Arria & Associados, Former President of the Comité Marítimo Venezolano, Member of the Executive Council of CMI, Av. Libertador, Multicentro Empresarial del Este, Torre Libertador, Nucleo B, Piso 15, Ofic. B-151, Chacao, Caracas 1060, Venezuela. Tel.: (58-212) 265.9555 - Fax: (58-212) 264.0305 - Mobile/Cellular phone: (58-416) 621.0247 E-mail: luiscova@cantv.net

Stephan CUENI
Licencié en droit, avocat et notaire public, Wenger Mathys Plattner, Aeschenvorstadt 55, CH-4010 Basel, Suisse. Tel.: (61) 279.7000 - Fax: (61) 279.7001

Peter J. CULLEN
President, Canadian Maritime Law Association c/o Stikeman, Elliott, 1155 René-Lévesque Blvd. West, suite 400, Montreal, QC H3B 3V2. Tel.: (514) 397.3135 - Fax: (514) 397.3412 - E-mail: pcullen@stikeman.com

Christopher O. DAVIS
Shareholder, Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, 201 St. Charles Avenue, Suite 3600, New Orleans, LA 70170, U.S.A. Tel.: +1 504 566.5200 – Fax: +1 504 636.4000 – E-mail: codavis@bakerdonelson.com - Website: www.bakerdonelson.com

Vincent de BRAUW
Lawyer, AKD Prinsen Van Wijmen, P.O.Box 4302, 3006 AH Rotterdam. Tel.: (10) 272.5300 - Fax: (10) 272.5400 - E-mail: vdebrauw@akd.nl

Colin de la RUE
Solicitor, Partner of Ince & Co., International House, 1 St. Katharine’s Way, London E1W 1UN, England. Tel.: (20) 7623.2011 - Fax: (20) 7623.3225. - E-mail: colin.delarue@ince-law.com

Henri de RICHEMONT
Avocat à la Cour, 61 rue La Boétie, 75008 Paris. Tel.: (1) 56.59.66.88 - Fax: (1) 56.59.66.80 - E-mail: henri.de.richemont@avocweb.tm.fr

Leo DELWAIDE
Professor of Maritime Law Universities Antwerp and Brussels, Deputy Mayor of the City of Antwerp, President of the Antwerp Port Authority, Markgravesstraat 17, 2000 Antwerpen, Belgium. Tel.: (32-3) 205.2307 - Fax: (32-3) 205.2031 - E-mail: Leo.Delwaide@Antwerp.be

Vincent M. DE ORCHIS
61 Broadway, Suite 2600, New York 10006-2802, U.S.A. Tel.: (1-212) 344.4700 - Fax: (1-212) 422.5299 - E-mail: vdeorchis@marinelex.com

Walter DE SA LEITAO
Lawyer “Petrobras”, Av. Chile n° 65 sula, 502-E Rio de Janeiro, Centro RI 20035-900, Brazil. Tel.: (55-21) 534.2935 - Fax: (55-21) 534.4574 - E-mail: saleitao@petrobras.com.br

Luis DE SAN SIMON CORTABITARTE
Abogado, c/ Regulo, 12, 28023 Madrid, Spain. Tel.: +34 91 357.9298 - Fax: +34 91 357.5037

Ibrahima Khalil DIALLO
Professeur, Université Cheikh Anta Diop, Dakar, Sénégal. Tel. Office: 221-864-37-87 - Cell. phone: 221-680-90-65 - E-mail: dkhalil2000@yahoo.fr
Titular Members

Anthony DIAMOND Q.C.
1 Cannon Place, London NW3 1 EH, United Kingdom

Christian DIERYCK
Avocat, Professeur d’Assurances Transport et Droit Maritime à l’Université Catholique de Louvain-la-Neuve, Vice Président de l’Association Belge de Droit Maritime, Korte Lozanastraat 20-26, 2018 Antwerpen, Belgium. Tel.: (3) 238.7850 - Fax: (3) 237.9899 - E-mail: c.dieryck@bdvm-law.be

William R. DORSEY, III
Advocate, President of the Maritime Law Association of the United States, of Counsel, Semmes, Bowen & Semmes, 250 West Pratt Street, Baltimore, Maryland 21201, U.S.A. Tel.: (1-410) 576.4738 - Fax: (1-410) 422.5299 - E-mail: wdorsey@mail.semmes.com

Kenjiro EGASHIRA
Professor of Law at the University of Tokyo, 25-17, Sengencho 3-chome, Higashi-Kurume, 203-0012 Tokyo, Japan. Tel.: (81-4) 2425.0547 - Fax: (81-4) 2425.0547 - E-mail: egashira@j.u-tokyo.ac.jp

Jan ERLUND
Lawyer c/o Gorrissen Federspiel Kierkegaard, 12 H.C. Andersen Boulevard, DK-1553 Copenhagen V, Denmark. Tel.: (33) 41.41.41 - Fax: (33) 41.41.33 - E-mail: je@gfklaw.dk

The Rt. Hon. Lord Justice EVANS
Essex Court Chambers, 24 Lincoln’s Inn Fields, London WC2A 3ED, United Kingdom

Aboubacar FALL
Docteur en droit, LL.M. (Seattle), Avocat à la Cour, Président de l’Association Senegalaise de Droit Maritime, 66, Bd de la République, Dakar, Senegal. Tel.: (221) 821.4735 - (221) 821.4543 - E-mail: asdam@ynternet.sn

Warren M. FARIS
Burke & Mayer, 20th Floor Energy Center, 1100 Poydras Street, New Orleans, Louisiana 70163-2000 U.S.A. Tel.: (504) 569-2900 - Fax: (504) 569-2099 - E-mail: wfaris@burke-mayer.com

Aurelio FERNANDEZ-CONCHESO
Clyde & Co., Av. Francisco de Miranda, Centro Comercial El Parque, Piso 8, Los Palos Grandes, Caracas, Venezuela. Tel.: (58-212) 385.6070/5411 - Fax: (58-212) 285.5098 - E-mail: clyde.co@cantv.net

Luis FIGAREDO PÉREZ
Maritime Lawyer, Average Adjuster, Arbitrator, Founder of the Maritime Institute of Arbitration and Conciliation (IMARCO); c/o Uria y Menéndez, Jorge Juan 6, 28001 Madrid, Spain

Velimir FILIPOVIC
Doctor of Law, Professor of Maritime and Transport Law at the University of Zagreb Faculty of Law, Trg Marsala Tita 14, 10000 Zagreb, Croatia

Emmanuel FONTAINE
Avocat à la Cour, c/o Gide, Loyrette, Nouel, 26 Cours Albert 1er, F-75008 Paris, Belgique. Tel.: (1) 40.75.60.00
Omar FRANCO OTTAVI
Doctor of law, Lawyer, Master in Maritime Law LLM, Professor on Maritime Law University Catolica Andres Bello Caracas, Executive Vice-President of the Venezuelan Maritime Law Association, Avenida Francisco Solano, Detras del Gran Café, Edificio San German, Piso 3, Oficina 3-D, Sabana Grande, Caracas, Venezuela. Tel.: (58-212) 762.6658/9753 - Fax: (58-212) 763.0454 - E-mail: legalmar@cantv.net

Wim FRANSEN
Avocat, President de l’Association Belge de Droit Maritime, Administrateur du CMI, Everdijstraat 43, 2000 Antwerpen, Belgique. Tel.: (3) 203.4500 - Fax: (3) 203.4501 - E-mail: wimfransen@fransenadvocaten.com

Nigel H. FRAWLEY
107A Cottingham St., Toronto, Ontario, Canada M4V 1B9. Tel.: home (416) 923.0333 - cottage (518) 962.4587 - Fax: (416) 944.9020 - E-mail: nhfrawley@earthlink.net

Javier GALIANO SALGADO
Lawyer, Albornos, Galiano Co., c/ Velázquez, 53-3º Dcha, 28001 Madrid, Spain. Tel.: (91) 435.6617 - Fax: (91) 576.7423 - E-mail: madrid@albornosgaliano.com

Nicholas GASKELL
David Jackson Professor of Maritime and Commercial Law, Institute of Maritime Law, University of Southampton, Highfield, Southampton SO17 1BJ, United Kingdom. Tel./Fax: +44 (0) 23 8059.3710 - E-mail: njjg@soton.ac.uk - Web: www.soton.ac.uk

Johanne GAUTHIER
Justice, Member of the Executive Council, Federal Court of Canada, Trial Division, 90 Sparks Street, 11th Floor, Ottawa, Ont. K1A OH9, Canada. Tel.: (613) 995.1268 - E-mail: j.gauthier@fct-cf.gc.ca

Mark GAUTHIER
Senior Counsel, Transport Canada, Legal Services, 17th Floor, Tower “C”, Place de Ville, 330 Sparks St., Ottawa, ON Canada K1A 0N5. Tel.: 613-990-5778 - Fax: 613-990-5777 - E-mail gauthim@tc.gc.ca

J.J.H. GERRITZEN
Average Adjuster, Judge at the Court of Appeal in The Hague, Oudorpweg 17, 3062 RB Rotterdam, Nederland. Tel.: (10) 452.5932

Paul A. GILL
Solicitor, Hon. Treasurer of the Irish Maritime Law Association, Partner of Dillon Eustace, Solicitors, Grand Canal House, 1 Upper Grand Canal Street, Dublin 4, Ireland. Tel.: (1) 667.0022 - Fax: (1) 667.0042 - E-mail: paul.gill@dilloneustace.ie

Guillermo GIMENEZ DE LA CUADRA
Abogado, Montero-Aramburu Abogados, Avda. Rep. Argentina, n° 24, planta 13, 41011 Sevilla, Spain. Tel.: (95) 499.0256 – Fax: (95) 499.0677 – E-mail: ggc@montero-aramburu.com

Philippe GODIN
Avocat à la Cour, Bouloy Grellet & Godin, 69 Rue de Richelieu, 75002 Paris, France. Tel.: (1) 44.55.38.83 - Fax: (1) 42.60.30.10 E-mail: bg.g@avocaweb.tm.fr
Titulary Members

Paul GOEMANS
Avocat, Goemans, Mirdikian & Van Praet, directeur et rédacteur de la revue “Jurisprudence du Port d’Anvers”, Eiermarket Building, St. Katelijnevest, 54, boîte 15, B-2000 Anvers, Belgique. Tel.: (3) 232.1851 - Fax: (3) 233.5963- E-mail: goemans.mirdikian@skynet.be

Edgar GOLD
Professor, C.M., Q.C., Ph. D., Past-President of the Canadian Maritime Law Association, Adjunct Professor of Maritime Law, Dalhousie University, Halifax, NS, Canada, Canadian Member, Board of Governors, World Maritime University, Malmö, Sweden and IMO-International Maritime Law Institute, Malta. 178/501 Queen Street, Brisbane, QLD 4000, Australia. Tel.: +61 7 3831.5034 - Fax: +61 7 3831.5032 - Mobile: 0407-026-222 - E-mail: edgold@bigpond.net.au

Charles W.H. GOLDIE
Barrister, 2 Myddylton Place, Saffron Walden, Essex CB10 1BB, United Kingdom. Tel.: (1799) 521.417 - Fax: (1799) 520.387

Karl-Johan GOMBRII
Vice-President of CMI, c/o Nordisk Skibsrederforening, Kristinelundveien 22, P.O.BOX 3033 Elisenberg, 0207 Oslo, Norway. Tel.: +47 22 13.56.00 - Fax: +47 22 43.00.35 - E-mail: kjgombrii@nordisk.no

Rucemah Leonardo GOMES PEREIRA
Former Vice-President Associação Brasileira de Direito Maritimo, Lawyer, Founding and First Chairman Brazilian Association of Average Adjusters, Professor of Maritime Insurance at Fundação Escola Nacional de Seguros - Rio de Janeiro, Manager of Rucemah and Sons Ltd./Average Adjusting, Avenida Churchill 60, Grs. 303/04, 20020-050, Rio de Janeiro, RJ, Brasil. Tel.: (21) 220.2326/262.4111 - Fax: (21) 262.8226 - E-mail: rfam@rionet.com.br

José Luis GONI
Abogado, Partner Goni & Co. Abogados, Arbitrator of the Spanish Council of the Chambers of Commerce Industry and Shipping, Serrano 91-4°, 28006 Madrid 6, Spain. Tel.: (91) 563.4740 - Fax: (91) 563.1143 - Tlx: 42344 MARL E

Francisco GONI JIMENEZ
Abogado, Universidad Autonoma de Madrid, Master in Laws (L.I.M. Maritime Law) University of Cardiff, c/o Goni & Co., Serrano 91, 28006 Madrid 6, Spain. Tel.: (91) 563.4740 - Fax: (91) 563.1143 - Tlx: 42344 MARL E

Raul GONZALEZ HEVIA
Abogado, Average Adjuster, Head of the Marine and Navigation Department of Mutualidad de Seguros del Instituto Nacional de Industria (MUSINI), Vice-President of the Spanish Association of Average Adjusters, Avenida de America, 46, 28028 Madrid, Spain. Tel.: (91) 726.7699

Rodolfo Angel GONZALEZ LEBRERO
Lawyer, Doctor of Laws, Lebrero & Co., Valenzuela 8 - 1 dcha, 28014 Madrid, Spain

Manuel Angel GONZALEZ RODRIGUEZ
Garrigues & Andersen Norte, S.L., Rodriguez Arias, 15-4°, 48008 Bilbao, Spain. Tel.: (94) 4700699 - Fax: (94) 4447998
Luis GONZALO MORALES

Gideon GORDON
Vice President Israel Maritime Law Association, S. Friedman & Co., 31 Ha’atzmaut Road, Haifa, Israel. Tel.: (4) 670.701 - Fax: (4) 670.754

Lars GORTON
Juridiska fakulteten, Box 207, 22100 Lund, Sweden. Tel.: 0046-2221127 - E-mail: Lars@Gorton@jur.lu.se

James E. GOULD
Metcalf & Company, Benjamin Wier House, 1459 Hollis Street, Halifax, Nova Scotia, Canada B3J 1V1. Tel.: (902) 420.1990 - Fax: (902) 429.1171 - E-mail: jamesgould@metcalf.ns.ca

Ivo GRABOVAC
Doctor of Law, Professor of Maritime and Transport Laws at the University of Split Faculty Law, Domovinskog rata 8, 21000 Split, Croatia

Me Luc GRELLET
Avocat à la Cour, Bouloy Grellet & Godin, 69, rue de Richelieu, 75002 Paris. Tel.: (1) 44.55.38.33 - Fax: (1) 42.60.30.10 - E-mail: bg.g@avocaweb.tm.fr

Patrick J.S. GRIGGS
Solicitor of the Supreme Court of Judicature, Past President of CMI, Senior Partner of Ince & Co (Solicitors), International House, 1 St. Katharine’s Way London, E1W 1UN, England. Tel.: (20) 7623.2011 - Fax: (20) 7623.3225 - E-mail: p.griggs@incelaw.com

Kurt GRÖNFORS
Professor of Law, Göteborgs Universitet, Vasagatan 3, S-411 24 Göteborg, Sweden

Etienne GUTT
Président Émérite de la Cour d’Arbitrage du Royaume de Belgique, Professeur émérite de l’Université de Bruxelles, 7 rue Basse, 1350 Jandrain-Jandrenouille, Belgique. Tel.: (19) 633.950

José Tomas GUZMAN SALCEDO
Lawyer, Average Adjuster, Professor of Maritime & Insurance Law, Director of Chilean Maritime Law Association, Hendaya 60, Of. 503. Zip Code 7550188 Santiago, Chile - Tel.: (56-2) 3315860/61/62/63 - Fax: (56-2) 3315811 - E-mail: jtomaguzman.s@tie.cl

Lennart HAGBERG
Consultant Mannheimer Swartling, Postal address: Katarina Ribbings vag 19, SE-443 22 Lerum, Sweden. Tel.: (46) 3110.9600 - Fax: (46) 3110.9601 - E-mail: info@msa.se

Taichi HARAMO
Dr. jur., Professor, Faculty of Law, Teikyo University, 1034-1 Fussa, Fussa-shi, Tokyo 197-0011, Japan. Tel.: (81-4) 2551.1549 - Fax: (81-4) 2530.5546 - E-mail: haramo@mti.biglobe.ne.jp

Sean Joseph HARRINGTON
Justice, Federal Court, 90 Sparks Street, Ottawa, ON K1A 0H9. Tel.: (613) 947.4672 - Fax: (613) 947.4679 - E-mail: sean.harrington@cas-satj.gc.ca
Titulary Members

Walter HASCHE
Doctor of law, Advocate, Former President of the Maritime Law Association of the Federal Republic of Germany, CMS Hasche Sigle Eschenlohr Peltzer Schäfer, Stadthausbrücke 1-3, D-20355 Hamburg, Deutschland. Tel. (49-40) 376.300 - Fax: (49-40) 376.30300

Hiroshi HATAGUCHI
Member of the Japan Branch of the Int. Law Ass. and Japanese Society of Private Int. Law, 2-23-1, Asagaya minani, Suginami-ku, Tokyo, 165-004, Japan

Raymond P. HAYDEN
First Vice President of the Maritime Law Association of the United States, Partner of law firm Hill Rivkins & Hayden LLP, 90 West Street, Suite 1000, New York, NY 10006-1039, U.S.A. Tel.: (212) 669.0600 - Fax: (212) 669.0699 - E-mail: rhayden@hillrivkins.com

George W. HEALY III
Advocate, Past President of the Maritime Law Association of the United States, Partner Phelps Dunbar LLP, Canal Place, 365 Canal Street - Suite 2000, New Orleans L.A. 70130-6534, U.S.A. Tel.: (504) 566.1311 - Fax: (504) 568.9130 - E-mail: healyg@phelps.com

Nicholas J. HEALY
Former President of The Maritime Law Association of the United States, Advocate, Honorary Vice-President of the Comité Maritime International, Healy & Baillie, Adjunct Professor of Law, New York University, c/o Healy & Baillie, LLP, 61 Broadway, New York, N. Y. 10006-2701 U.S.A. Tel.: (212) 943.3980 - Fax: (212) 425.0131 - (917) 522.1261 (home) - E-mail: reception@healy.com

Per Erik HEDBORG
Former President of the Swedish Association of International Maritime Law, Former Managing Director of the Swedish Steamship Owner’s Insurance Association, Götabergsgatan 34, S-411 34 Göteborg 4, Sweden

Rolf HERBER
Professor, Doctor of law, Rechtsanwalt, Ahlers & Vogel, Schaartor 1, D-20459 Hamburg, Germany. Tel.: (40) 3785.880 - Fax: (40) 3785.8888

Stuart HETHERINGTON
Colin Biggers & Paisley, Level 42, 2 Park Street, Sydney, Australia. Tel.: +61 2 8281.4555 - Fax: +61 2 8281.4567 – E-mail: swh@cbp.com.au

Mats HILDING
Former President of the Swedish Association of International Maritime Law, Polhemsgatan 27, S-11230 Stockholm, Sweden

Vinko HLACA
Doctor of law, Professor of Maritime and Transport Law at the University of Rijeka, Faculty of Law, Hahlić 6, 51000 Rijeka, Croatia

Pierre HOLLENFELTZ DU TREUX
Franselei 15, 2950 Kapellen, Belgium. Tel.: (3) 666.4131 - Fax: (3) 666.3328

Bill HOLOHAN
Solicitor, Hon. Secretary of the Irish Maritime Law Association, G. J. Moloney & Co., Hambledon House, 19-26 Lower Pembroke Street, Dublin 2, Ireland. Tel.: (1) 678.5199 - Fax (1) 678.5146 - E-mail: Bholohan@gjmoloney.ie
Titulary Members

John P. HONOUR
“Sans Souci”, Hawthorne Road, Bickley, Bromley, Kent BR1 2HN, England

Chester D. HOOPER
Attorney, Former President of The Maritime Law Association of the United States, Holland & Knight LLP, 195 Broadway, New York N.Y. 10007-3189, U.S.A. Tel.: (1-212) 513.3444 - Fax: (1-212) 385.9010 - E-mail: chooper@hklaw.com

Takeo HORI
Former Vice-Minister at the Ministry of Transport, Vice-President of the Japanese Maritime Law Association, 6-15-36 Ikuta, Tamaku, Kawasaki-Shi, Kanagawaken, Japan

Rainer HORNBOG
Former President of Board of AB Indemnitas, and former Director Hansakoncernen, Sturegatan 56, SE-114 36 Stockholm, Sweden

Pierre HOUSSIN
Ancien Vice-Président de l’Association Française du Droit Maritime, 93, rue Boileau, F-75016 Paris, France. Tel.: (1) 46.47.97.84

N. Geoffrey HUDSON
Barrister and Consultant Average Adjuster, Past Chairman of the Association of Average Adjusters, Former President of the Association Internationale de Disparchements Europeens, Vice-President of the British Maritime Law Association, 5 Quayside, Woodbridge, Suffolk IP12 1BN, United Kingdom. Tel. and Fax: (1394) 383.811

Jean HULLIGER
Director of the Swiss Maritime Navigation Office, Head of the Division for Communications, Federal Department of Foreign Affairs, Département fédéral des affaires étrangères, 3237 Friedhagweg 14, 3047 Bremgarten b. Bern. Tel.: +41 (0)31 302.2732 – Fax: +41 (0)31 3014400 - E-mail: jean-hulliger@bluewin.ch

Marc A. HUYBRECHTS
Advocate, Member of the Antwerp Bar, Professor of Maritime and Transport Law at the University of Leuven and the University of Antwerp, Amerikalei 73, B-2000 Antwerpen, Belgique. Tel.: (3) 248.1500 - Tlx:71557 - Fax: (3) 238.4140

A. Stuart HYNDMAN Q.C.
Borden Ladner Gervais LLP, 1000 de La Gauchetière Street West, Suite 900, Montreal, Québec H3B 5H4, Canada. Tel.: (514) 954.3117 - Fax: (514) 954.1905 - E-mail: shyndman@blgcanada.com

Juan Luis IGLESIAS PRADA
c/Jorge Juan, 6, 28001, Madrid, Spain. Tel.: (91) 586.0407 - Fax: (91) 586.0403

Marko ILESIC
University of Ljubljana, Faculty of Law, Poljanski nasip 2, 1000 Ljubljana, Slovenia

Rafael ILLESCAS ORTIZ
Catedratico de Derecho Mercantil de la Universidad Carlos III de Madrid, 126 28903 Getafe (Madrid). Tel.: +34 91 6249507 - Fax: +34 91 6249589

Flemming IPSEN
Lawyer, Maersk Air A/S, Copenhagen Airport South, 2791 Dragør, Denmark. E-mail: da@maersk-air.dk
Titulary Members

Dorde IVKOVIĆ
Advocate (Ret), POB 70, Piran 6330, Slovenia. Tel.: (66) 746863 - E-mail: ivkovic@siol.net

R.E. JAPIKSE
Advocate, Professor at the Leiden University, Vijverlaan 15, 3062 HH Rotterdam, Nederland

John L. JOY
Partner of White, Ottenheimer & Green, P.O.Box 5457, Baine Johnston Centre, 10 Fort William Place, St. John’s, Nfld., A1C 5W4, Canada. Tel.: (709) 722.7584 - Fax: (709) 722.9210 - JLJ@wob.nf.ca

Hrvoje KACIC
Doctor of Law, Professor of Maritime Law at the University of Split Faculty of Law, Attorney at Law Petrova 21, 10000 Zagreb, Croatia

Anton KARIZ
University of Ljubljana, Faculty of Maritime Studies and Transport, Splosna Plovba Obala 55, Portoroz 6320, Slovenia

Yoshiya KAWAMATA
President and Professor of Law of Osaka International University, Yamashina-Minami-Danchi F711, 2-1 Nishino-rikyu-cho, Yamashina-ku, Kyoto 607-8345, Japan

Marshall P. KEATING
Advocate, Deorchis Walker & Corsa LLP, 61 Broadway - Floor 26, New York, NY 10006-2802, U.S.A. Office Tel.: (212) 344.4700 - Fax: (212) 422.5299 - Home tel.: (212) 737.9393

Tony KEGELS
Avocat, Mechelsesteenweg 196, 2018 Antwerpen, Belgique

Sean KELLEHER
Manager, Legal Department, Irish Dairy Board, Grattan House, Lr. Mount Street, Dublin 2, Ireland. Tel.: (1) 6619.599 -Fax: (1) 662.2941 - E-mail: skelleher@idb.ie

Aliki KIANTOU-PAMBOUKI (Mrs.)
Professor at the University of Thessaloniki, 3 Agias Theodoras Street, 546 23 Thessaloniki, Greece. Tel.: (31) 221.503 - Fax: (31) 237.449

John KIMBALL
c/o Blank Rome LLP - The Chrysler Building, 405 Lexington Avenue, New York, NY 10174-0202, U.S.A. - Tel.: +1 212 885.5259 - Fax: +1 917 332.3730 - E-mail: JKimball@BlankRome.com

Noboru KOBAYASHI
Professor of Law at Seikei University, 314 Este-City, Mutsuura-cho 1950-21, Kanazawa-ku, Yokohama City 236-0032, Japan. Tel./Fax: (45)781.0727 - E-mail: kobayashi@law.seikei.ac.jp

Takashi KOJIMA
Professor Emeritus of Kobe University, 2-18 Hiratacho, Ashiya City, Hyogoken, 659-0074, Japan
Petar Kragić
Doctor of Law, President of the Croatian Maritime Law Association, Legal Counsel of Tankerska plovidba d.d., B. Petranovića 4, 23000 Zadar, Croatia

Bernd Kröger
Möörkenweg 39a, 21029 Hamburg. Tel. +49 40 7242.916 - Fax: +49 40 30330.933 - E-mail: gerke@reederverband.de

Sergio La China
Avocat, Professeur à l’Université de Gênes, Président du Comité Génois de l’Association Italienne de Droit Maritime, Via Roma 5/7, 16121 Genova, Italia. Tel.: (010) 541.588 - Fax: (010) 592.851 - E-mail: sergiolachina@tin.it

Herman Lange
Avocat, Schermersstraat 30, B-2000 Antwerpen, Belgique. Tel.: (3) 203.4310 - Fax: (3) 203.4318 - E-mail: h.lange@lange-law.be

Pierre Latron
Président de la Chambre Arbitrale Maritime de Paris, Ancien Président de l’Association Française du Droit Maritime, 47 rue de Monceau, 75008 Paris, France. Tel.: (1) 45.62.11.88 - Fax: (1) 45.62.00.17

Alex Laudrup
President of the Danish Branch of CMI, Lawyer, Gorrissen Federspiel Kierkegaard, H.C. Andersens Boulevard 12, DK-1553 Kobenhavn V, Denmark. Tel.: (33) 414.141 - Fax: (33) 414.133 - E-mail: al@gfklaw.dk

Manfred W. Leckszas
Advocate, partner in Ober, Kaler, Grimes & Shriver, 120 East Baltimore Street, Baltimore, Maryland 21202-1643, U.S.A. Tel.: (301) 685.1129 - Tlx: 87774 -Fax: (301) 547.0699

Antonio Lefebvre d’Ovidio
Avocat, Ancien Professeur à l’Université de Rome, Via del Nuoto, 11 (Due Pini), 00194 Rome, Italia

Carlos R. Lesmi
Lawyer, Secretary to the Argentine Maritime Law Association, Partner of Lesmi & Moreno, 421 Lavalle, C1047AAI Buenos Aires, Argentina. Tel.: +54 11 4393 5292/5393/5991 - Fax +54 11 4393 5889 - E-mail: lesmiymoreno@fibertel.com.ar

Hans Levy
Direktor, Lawyer, Assuranceforeningen SKULD, Frederiksborggade 5, 1360 Kobenhavn, Denmark. Tel.: (33) 116.861 - Fax: (33) 113.341 - E-mail: hans.levy@skuld.com

Jacques Libouton
Avocat, chargé de cours à l’Université Libre de Bruxelles, Vice Président de la Licence spécial en droit maritime et aérien de l’Université Libre de Bruxelles, c/o Gérard et Associés, Louizalaan 523, bte. 28, 1050 Bruxelles, Belgique. Tel.: (2) 646.6298 - Fax: (2) 646.4017

Domingo Martin Lopez SaaVEDra
Lawyer, former Professor, San Martin 662 4° Floor, C1004 AAN, Buenos Aires, Argentina. Tel.: (1) 355.868/8704/8407 - Fax: (1) 325.9702 - E-mail: lopez-saavedra@AIUARG01
Titulary Members

Alberto LOVERA-VIANA
Doctor of law, Lawyer and Professor, partner of Law Firm Alvarez & Lovera, Former Senator and President of the Merchant Marine Sub-Committee of the Venezuelan Senate, VM-LA’s Vice-President of Institutional Relationships, Av. Libertador, Multicentro Empresarial del Este, Torre Libertador, Nucleo B, Piso 15, Ofic. B-151, Chacao, Caracas 1060, Venezuela. Tel.: (58-212) 481.7779 - E-mail: alovera@cantv.net

Ian M. MACKAY
K.ST.J., LLB., Master Mariner, Barrister and Solicitor. Founder Chairman of the New Zealand Branch and Former President of the Maritime Law Association of Australia and New Zealand, Chief Arbitration Commissioner for New Zealand, Chairman of the Maritime Safety Authority of New Zealand, 23A Perth Street, Ngaio, Wellington 4, New Zealand

Roberto MAC LEAN UGARTECHE
Former Supreme Court Judge, Professor of International Law at the Law School of Universidad Mayor de San Marcos, Banco Central de Reserva del Perú, J.A. Miro Quesada no. 411, Lima 1, Perú

Eamonn A. MAGEE, LL.B.,B.L.
Barrister at Law, Marine Manager, Allianz, Grand Canal House, One Upper Grand Canal Street, Dublin 4, Ireland. Tel.: (353-1) 667.0022 - Fax: (353-1) 660.8081

Ian MAITLAND
Solicitor, Partner of Wallmans Lawyers, 173 Wakefield St., Adelaide, South Australia 5000, Australia. Tel.: 08 8235 3000 - Fax: 08 8232 0926 -E-mail: Ian.Maitland@wallamans.com.au

Mohammed MARGAOUI
Vice-Président de la Chambre d’Arbitrage Maritime du Maroc, 30 Bld Mohammed V, Casablanca 01, Maroc. Tel.: (2) 271.941 - Tlx: 21969 - Fax: (2) 261.899

David W. MARTOWSKI
President, Society of Maritime Arbitrators, Inc., 91 Central Park West, New York, NY 10023, U.S.A. Tel.: (212) 579.6224/(212) 873.7875 - Fax: (212) 579.6277 - E-mail: dmartowski@verizon.net

Warren J. MARWEDEL
2nd Vice President of Maritime Law Association of the United States, Shareholder and President of the Law firm of Marwedel, Minichello & Reeb, PC, 10 South Riverside Plaza, Suite 720, Chicago, Illinois 60606, United States. Tel.: (312) 902-1600 - Fax: (312) 902-9900 - E-mail: wmarwedel@mnr-law.com

Carlos MATHEUS-GONZALEZ
Lawyer, Matheus & Ullon, Asocs., Vice-President VMLA, Esq. Mijares, Torre Banco Lara, p/11, Ofic. A-B, Carmelitas, Caracas Venezuela. Tel.: (58-212) 864.8119 - E-mail: matheusandulloa@cantv.net

Panos MAVROYANNIS
Avocat au Barreau d’Athènes, Cour de Cassation, Secrétaire de l’Association Hellénique de Droit Maritime - Heroon Polytechniou Ave. 96, Piraeus, Greece. Tel.: (1) 451.0562 - Tlx. 212410 - Fax. (1) 453.5921
Howard M. McCORMACK
Lawyer, Former President of the Maritime Law Association of the United States, Burke & Parsons, 100 Park Avenue 30FL, New York, NY 10017-5533 - Tel. Direct +1 212 354.3820 Tel. Main +1 212 354.3800 - Fax: +1 212 221.1432 - E-mail: mccormack@burkeparsons.com

Petria McDONNELL
Solicitor, Vice-President of the Irish Maritime Law Association McCann FitzGerald, Solicitors, 2 Harboursmaster Place, Dublin 1. Tel.: (1) 8290 000 - Fax: (1) 8290.010 - E-mail: pmd@mccannfitzgerald.ie

Brian McGOVERN
Senior Counsel, President of the Irish Maritime Law Association Law Library Building, 158/159 Church Street, Dublin 7 Tel.: (1) 804.5070 - Fax: (1) 804.5164 - E-mail: bjmcg@indigo.ie

J. Niall McGOVERN
Barrister-at-Law, Honorary Vice-President of the Comité Maritime International, 23 Meryn Park, Ballsbridge, Dublin 4, Ireland. Tel. and Fax: (1) 269.1782

Dermot J. McNULTY
Barrister-at-Law, Former President of the Irish Maritime Law Association, 97 Willow Park Ave., Glasnevin, Dublin 11. Tel.: (1) 8422246 - Fax: (1) 8429896 - E-mail: mcnultys@tinet.ie

Fernando MEANA GREEN
Velazquez, 98, 2° dcha., Madrid 28006, Spain

Hans G. MELLANDER
Former Vice-President and Legal Adviser to i.a. the Broström Group of Shipping Companies, the Eriksberg and Uddevalle Ship Yards and Svenska Handelsbanken, Delsjövägen 11, S-41266 Göteborg, Sweden

Ignacio L. MELO Jr.
Doctor of Law, Senior Partner of Melo & Melo Attorneys, President of the Mexican Maritime Law Association, Former President of the Iberoamerican Maritime Law Institute, General Director of the Ship Owners Agents National Association, Rio Marne No. 23, Col. Cuauhtemoc, C.P. Mexico 06500, Mexico D.F. Tel.: (5) 705.4311/705.4561 - Fax: (5) 520.7165 - E-mail: imelo@melo-melo.com.mx

Marcial José Z. MENDIZABAL

Aurelio MENENDEZ MENENDEZ
Abogado, Presidente de la Comision de Codificacion, Rama Derecho Mercantil, Catedratico de Derecho Mercantil, Uria y Menéndez, Jorge Juan 6, 28001 Madrid, Spain

Thomas A. MENSAH
Dr., Judge of the Tribunal for the Law of the Sea, 50 Connaught Drive, London NW11 6BJ. Tel.: (20) 84583180 - Fax: (20) 84558288 - E-mail: tamensah@yahoo.co.uk

Jes Anker MIKKELSEN
Lawyer, Dragsted Schlüter Aros, 4 Raadhustaplen, DK-1550 Köbenhavn V, Denmark. Tel.: (45) 77.33.77.33 - Fax: (45) 77.33.77.44 - E-mail: jes.anker.mikkelsen@bechbruundragsted.com
Ljerka MINTAS-HODAK  
Doctor of Law, Htzova 2, 10000 Zagreb, Croatia

Sumati MORARJEE (Mrs.)  
Chairman Emeritus of Scindia Steam Navigation Co., Bombay, c/o Scindia House, Narotan Morarjee Marg. Ballard Estate Bombay 400 038, India

William. A. MOREIRA, Q.C.,  
c/o Stewart McKelvey Stirling Scales, 1959 Upper Water St., P.O.Box 997, Halifax, N.S., B3J 2X2. Tel.: (902) 420.3346 - Fax: (902) 420.1417 - E-mail: wmoreira@smss.com

Hidetaka MORIYA  
Lawyer, Braun Moriya Hoashi & Kubota, 505 Tokyo Sakurada Building, 1-3 Nishishinbashi, 1-Chome, Minato-ku, Tokyo 105-0003, Japan. Tel.: (81-3) 3504.0251 - Fax: (81-3) 3595.0985

James F. MOSELEY  
Former President of the Maritime Law Association of the United States, Lawyer in Admiralty and Maritime Law, Moseley, Warren, Prichard & Parrish, 501 West Bay Street, Jacksonville, Florida 32202, U.S.A. Tel.: (904) 356.1306 - Fax: (904) 354.0194 - E-mail moseley@southeast.net

Françoise MOUSSU-ODIER (Mme)  
Consultant Juridique, M.O. CONSEIL, 114, Rue du Bac, 75007 Paris. Tel./Fax: (1) 42.22.23.21 - E-mail: f.odier@noos.fr

The Rt. Hon. The Lord MUSTILL  
Essex Court Chambers, Lincoln’s Inn Fields, London WC2A 3ED, United Kingdom. Tel. (20) 7813.8000 - Fax: (20) 7813.8080 - E-mail: mustill@lingone.net

Masakazu NAKANISHI  
Chief Executive Secretary of The Hull Reinsurance Pool of Japan 1997, Tokyo Average Adjusting Office Ltd., Ohmori Tokyo Kayo Bldg. (7th Floor), 1-5-1 Ohmorikita, Ohtaku, Tokyo 143-0016, Japan. Tel.: (81-3) 5493.1101 - Fax: (81-3) 5493.1108

Peter Gad NASCHITZ  
President Israel Maritime Law Association, Naschitz, Brandes & Co., 5 Tuval Street, Tel-Aviv 67897, Israel. Tel.: (3) 623.5000 - Fax: (3) 623.5005 - E-mail: pnaschitz@nblaw.com

Bent NIELSEN  
Lawyer, Kromann Reumert, Sundkrogsgade 5, DK-2100 Copenhagen O, Denmark. Tel.: +45 70 121211 - Fax: +45 70 121311 - E-mail: bn@kromannreumert.com

José Angel NORIEGA PEREZ  
Doctor of law, Lawyer, Partner of law firm Arosemena, Noriega & Castro, Professor of civil and commercial law at the University of Panama, Member of the Academy of Law, member of the Banking Law Institute, former President of the Maritime Law Association, Member of the National Bar Association, of the Interamerican Bar Association and the International Bar Association. P.O. Box 5246, Panama 5, Panama

Seiichi OCHIAI  
Professor at the University of Tokyo, 6-5-2-302 Nishishinjuku, Shinjuku-ku, Tokyo 160-0023, Japan. Tel/Fax: (81-3) 3345.4010 - E-mail: sochiai@j.u-tokyo.ac.jp
Titulary Members

Chris O. Ogunbanjo
Chief Chris O. Ogunbanjo, Solicitor of the Supreme Court of Nigeria, President of The Nigerian Maritime Law Association, 3 Hospital Road, Box 245, Lagos, Nigeria

Colm O’hOisin
Barrister-at-Law, Law Library, P.O. Box 4460, Law Library Building, 158/9 Church Street, Dublin 7, Ireland. Tel.: (1) 804.5088 - Fax: (1) 804.5151

Tsuneo Ohtori
Advocate, Emeritus Professor of The University of Tokyo, President of The Japanese Maritime Law Association, Honorary Vice-President of The Comité Maritime International, 6-2-9-503 Hongo, Bunkyo-ku, Tokyo 113, Japan

Barry A. Oland
Barrister and Solicitor, Past President of The Canadian Maritime Law Association, Barrister & Solicitor, P.O.Box 11547, 2020 Vancouver Centre, 650 West Georgia Street, Vancouver, B.C. V6B 4N7. Tel. (604) 683.9621 - Fax: (604) 669.4556 - E-mail: shiplaw@aboland.com

Maria Cristina de Oliveira Padilha (Mrs.)
Judge of The Maritime Court, c/o Pedro Calmon Filho & Associados, Av. Franklin Roosevelt 194/8, 20021 Rio de Janeiro, Brasil. Tel.: (21) 220.2323 - Tlx:2121606 PCFA BR

Manuel Olivencia Ruiz
Catedrático de Derecho Mercantil de la Universidad de Sevilla, Delegado de Espana en Uncitar, Presidente de Comité Regional de Sevilla Asociacion Española de Derecho Marítimo, Paseo de la Palmera 15, 41013 Sevilla, España

David R. Owen
314 Brightwood Club Drive, Lutherville, Maryland 21093-3641, U.S.A

Claës Palme
Advocate, Honorary Member and former Honorary Secretary of The Swedish Association of International Maritime Law, Sturegatan 36B, S-11436, Stockholm, Sweden

Richard W. Palmer
Advocate, Palmer Biezup & Henderson, Former President of The Maritime Law Association of The United States, 600 Chestnut Street, Public Ledger Building, Independence Square, Philadelphia, Pennsylvania 19106, U.S.A.

Nils-Gustaf Palmgren
Managing Director, Neptun Juridica Co. Ltd., Past President of The Finnish Maritime Law Association, Bulevardi 1A, 00100 Helsinki, Finland. Tel.: (8) 626.688 - Fax: (8) 628.797

Roger Parenthou
Dispacheur, Secrétaire Général Honoraire du Comité des Assureurs Maritimes de Marseille, Chargé d’Enseignement aux Facultés de Droit et de Sciences Politiques d’Aix-en-Provence et de Lyon, “Le Marbella”, 305B Avenue du Prado, 13008 Marseille, France. Tel.: (91) 754.320

Gordon W. Paulsen
Lawyer, Former President of The Maritime Law Association of The United States, Member of The Firm Healy & Baille, 29 Broadway, New York, N.Y. 10006, U.S.A. Tel.: (212) 943.3980 - Fax (212) 425.0131
PART I - ORGANIZATION OF THE CMI

Titular Members

Drago PAVIC
Doctor of Law, Professor of Maritime Law, College of Maritime Studies, Zrin-skofrankopanska 38, 21000 Split, Croatia.

Marko PAVLIHA
Professor of maritime, transport and insurance law at the University of Ljubljana, President of the Maritime Law Association of Slovenia, Consultant to Sava Re, Address: C/o University of Ljubljana, Faculty of Maritime Studies and Transport, Vice-Dean of the Faculty, Pot pomorscakov 4, SI-6320 Portoroz, Slovenia. Tel.: +386 5 676.7100/676.7214 - Fax: +386 5 676.7130 - E-mail: marko.pavliha@fpp.edu

André PIERRON
Expert Répartiteur d’Avaries Communes, Le Reuilly, 162, avenue du Président Robert Schuman, 33110 Le Bouscat, France

Emilio PIOMBINO
Advocate and Average Adjuster, Via Ceccardi 4/26, 16121 Genoa, Italy. Tel.: (010) 562623 - Fax: (010) 587259 - E-mail: epiombino@studiogcavallo.it

Mag. Andrej PIRŠ
C/o Faculty of Maritime Studies and Transport, Maritime Law Association of Slovenia, University of Ljubljana, Pot pomorscakov 4, 6320 Portorož, Republic of Slovenia Tel. (66) 477.100 - Fax (66) 477.130

Knud PONTOPPIDAN
Lawyer, Rederiet A.P. Møller, Esplanaden 50, DK-1298 Copenhagen K, Denmark. Tel.: (33) 633.441 - Fax: (33) 633.644 - E-mail: cphpont@maersk.com

Alfred H.E. POPP Q.C.
Senior General Counsel Admiralty & Maritime Law Department of Justice, Maritime Law Secretariat, Place de Ville, Tower C, Room 17, 330 Sparks Street, Ottawa, Ontario, K1A ON5, Canada. Tel.: (613) 957.4666 - Fax: (613) 990.5777 - E-mail: poppa@tc.gc.ca

Vincent Mark PRAGER
Partner of Stikeman, Elliott, 1155 Blvd. René-Lévesque W., 40th Flr., Montreal, Quebec, H3B 3V2, Canada. Tel.: (514) 397.3130 - Fax: (514) 397.3412 - E-mail: vprager@mtl.stikeman.com

Manuel QUIROGA CARMONA
Lawyer LL.M. (Southampton), member of the Executive Committee of the Peruvian Maritime Law Association, Los Geranios no. 209, Lince, Lima, Perú

Dieter RABE
Doctor of law, Attorney at Law, CMS Hasche Sigle, Stadthausbrücke 1-3, 20355 Hamburg, Germany. Tel.: +49 40 37636343 - Fax: +49 40 37636300 - E-mail: Dieter.Rabe@cmslegal.de

Jorge M. RADOVICH
Lawyer and Full Professor of Maritime and Insurance Law, Member of the Executive Council and of the Arbitration Committee of the Argentine Association of Maritime Law, Member of the Editing Council of the Revista de Estudios Marítimos (Magazine of Maritime Studies), Partner of the Law Firm Ruggiero, Radovich & Fernández Llorente, Avda. Corrientes 545 6º Piso, C1043AAE, Buenos Aires, Argentina. Tel.: +54 11 4328.2299 - Fax: +54 11 4394.8773 - E-mail: jradovich@sealaw.com.ar
Titulary Members

L.M.S. RAJWAR
Managing Director India Steamship Co.Ltd., 21 Hemanta Basu Sarani, Calcutta 700 001, India

Jan RAMBERG
Professor of Law at the University of Stockholm, Honorary Vice President of the Comité Maritime International, Past President of the Swedish Maritime Law Association, Residence: Centralvägen 35, 18357 Täby, Sweden. Tel.: (8) 756.6225/756.5458 Fax: (8) 756.2460 - E-mail: jan.ramberg@intralaw.se

Klaus RAMMING
Lebuhn & Puchta, Vorsetten 35, 20459 Hamburg. Tel.: +49 40 3747780 - Fax: +49 40 364650 - E-Mail: klaus.ramming@lebuhn.de

Sigifredo RAMIREZ CARMONA
Captain-Colombian Merchant Marine, Lawyer-Admiralty law, Maritime surveyor, Lecturer at the Naval School and at the University, Carrera 15 no. 99-13, Of. 514, Bogotá, D.C. Colombia. Tel.: (1) 610.9329 - Fax: (1) 610.9379

Uffe Lind RASMUSSEN
Head of Division Danish Shipowners’ Association, Amaliegade 33, DK-1256 København K, Denmark. Tel.: (33) 114.088 - Fax: (33) 116.210 - E-mail: ulr@danmarksrederiforening.dk

José Domingo RAY
Professor Emeritus of the Faculty of Law and Social Science of the University of Buenos Aires, Member of the National Academy of Law and Social Science, Honorary President of the Argentine Maritime Law Association, Honorary Vice-President of Comité Maritime International, 25 de Mayo 489, 5th fl., 1339 Buenos Aires, Argentina. Tel.: (11) 4311.3011 - Fax: (11) 4313.7765 - E-mail: jdray@ciudad.com.ar

Patrice REMBAUVILLE-NICOLLE
Avocat à la Cour d’Appel de Paris, Membre du Barreau de Paris, Associé/Partner de la Société d’Avocats Rembauville-Nicolle, Bureau et Michau, 4, rue de Castellane, 75008 Paris. Tel.: (1) 42.66.34.00 - Fax: (1) 42.66.35.00 - E-mail: patrice.rembauville-nicolle@rbm21.com

Thomas M. REMÉ
Doctor of law, Attorney at Law, Kiefernweg 9, D-22880 Wedel, Deutschland. Tel.: (49) 4103.3988 - E-mail: tundereme@t-online.de

Martine REMOND-GOUILLOUD (Mme)
Professeur de Droit Maritime et de Transport, prix de l’Académie de Marine, diplomée de l’Institut des Etudes politiques de Paris, ancien auditeur de l’Institut des Hautes Études de Défense Nationale, Chevalier du Mèrite Maritime; 19 Rue Charles V, F-75004 Paris, France. Tel.: (1) 42.77.55.54 - Fax: (1) 42.77.55.44

Rafael REYERO-ALVAREZ
Lawyer, postgraduate course on Shipping Law at the London University (U.C.L.), Professor of Maritime Law at the Central University of Venezuela and the Merchant Marine University of Venezuela, Vice-President of Oil Affairs of the Comité Maritimo Venezolano, Garcia, Deffendini & Asoc., Paseo Enrique Eraso, Edif. La Noria, P.B., Oficinas 4 y 5, Las Mercedes, Caracas, Venezuela. Tel.: (58-212) 992.9413 - Fax: (58-212) 993.9817 - E-mail: escritorio@deffendini.com
Francis REYNOLDS, Q.C. (Hon.), D.C.L., F.B.A.
Professor of Law Emeritus in the University of Oxford, Emeritus Fellow of Worcester Col-
lege, Oxford, Honorary Professor of the International Maritime Law Institute, Malta, 61
Charlbury Rd, Oxford OX2 6UX, England. Tel.: (1865) 559323 - Fax: (1865) 511894 -
E-mail: francis.reynolds@law.ox.ac.uk

Winston Edward RICE
Winston Edw. Rice LLC, 328 N. Columbia St., Covington, Louisiana, 70433-4078. Tel.: (504) 893.8949 - Fax: (504) 893.4078 - E-mail: ricelaw@hotmail.com

Frode RINGDAL
Professor, Former President of the Norwegian Maritime Law Association, Askeveien 9,
0275 Oslo, Norway

David ROBLES
Lawyer in Admiralty and Maritime Law, Member of the Maritime Law Associations of
Panama and The United States, Senior partner, Law Firm of De Castro & Robles, P.O. Box
7082, Panama City 5, Panama. Tel.: (507) 263.6622 - Fax: (507) 263.6594

José Luis RODRIGUEZ CARRION
University Commercial Law Professor, Master Mariner, c/o Estudios Maritimo Mercantil,
Av. Ramon de Carranza 20, 11006 Cadiz, Spain. Tel.: (56) 25.22.00 - Fax: (56)
26.16.55/25.40.16

Jean-Serge ROHART
Avocat à la Cour, President of CMI, Villeneau Rohart Simon & Associés, 15 Place du Général
Catroux, F-75017 Paris, France. Tel.: (1) 46.22.51.73 - Fax: (1) 47.54.90.78 - E-mail: js.ro-
hart@villeneau.com

Ioannis ROKAS
Doctor of law, Professor at the Athens University of Economics and Business, 25 Vouk-
ourestiou Street, 10671 Athens, Greece. Tel.: (+30) 210 3616816 - Fax: (+30) 210 3615425
- E-mail: Athens@rokas.com

Roger ROLAND
Avocat, Chargé de cours de droit maritime et des transports, ainsi que d’assurances mar-
times à la Faculté de Droit de l’Université d’Anvers, Directeur et rédacteur de la revue de
la Jurisprudence du Port d’Anvers, Mechelsesteenweg 136, 2018 Antwerpen, Belgique

F. ROMERO CARRANZA
Doctor of law, Lawyer, Professor of Navigation Law at the Faculty of Law at the National
Buenos Aires University, Member of the Executive Council of the Argentine Maritime Law
Association, c/o Richards, Romero Carranza & Szeinbaum, L.N. Alem 1067, 15th Fl., 1001
Buenos Aires, Argentina. Tel.: (1) 313.6336/9619-311.1091/9 - Fax: (1)
313.6875/9343/6066

Thomas S. RUE
Johnstone, Adams, Bailey, Gordon & Harris LLC, p.o.Box 1988, Mobile, Alabama 36633,
United States. Tel.: +1 251 441.9203 - E-mail: tsr@johnstoneadams.com

Mag. Josip RUGELJ
Dantejeva 17, 6330 Piran, Republic of Slovenia
Fernando RUIZ-GALVEZ VILLAVERDE
Solicitor, Partner of the firm Ruiz-Gálvez Abogados, C/Vélezquez, 20, 3° y 4° Dcha., 28001 Madrid, Spain. Tel.: (91) 781.2191 - Fax: (91) 781.2192 - E-mail: fdoruizgalvez@retemail.es

Richard RUTHERFORD
Adjuster of Marine Claims, 10, Glebehyrst, Sanderstead (Surrey), England

Michael J. RYAN
Advocate, Of Counsel to Hill, Betts & Nash, LLP, 99 Park Avenue, 20th Floor, New York, New York 10016-1601, U.S.A. Tel. (212) 839.7000 - Fax: (212) 466.0514 - E-mail: mryan@hillbetts.com

Jerry RYSANEK
Director, International Marine Policy and Liability Department of Transport, Ottawa, Ont. - Tel.: (613) 998.0708 - Fax: (613) 998.1845 - E-mail: rysanej@tc.gc.ca

José Alfredo SABATINO-PIZZOLANTE

Yuichi SAKATA
Attorney at Law, Legal Adviser to the Japanese Shipowners’ Association and Nippon Yusen Kabushiki Kaisha, Home: 4-7-13-101, Meguro, Meguro-ku, Tokyo, Japan 153-0063. Tel. & Fax: (3) 5768.8767

Ronald John SALTER
Solicitor, former President of the Maritime Law Association of Australia and New Zealand, Chairman of Partners of Phillips Fox, 120 Collins Street, Melbourne, Victoria 3000, Australia. Tel.: (3) 274.5000 - Fax: (3) 274.5111 - E-mail: ron.salter@phillipsfox.com

Fernando SANCHEZ CALERO
Abogado, Catedrático de Derecho Mercantil en la Universidad de Madrid. Anct. Presidente de l’Association Espagnole de Droit Maritime, Quintana, 2-2°, 28008, Madrid, Spain

Julio SANCHEZ-VEGAS
Doctor of law, Venezuelan lawyer, Master in Maritime Insurance and Aviation, University of London, England, Professor in Maritime Law in “Rafael Urdaneta” University, “Andrés Bello” Catholic University and the School for Higher Studies of the Merchant Marine, VM-LA’s Vice-President of Insurance, Hoet, Pelaez, Castillo & Duque, Av. Blandin, C. San Ignacio, p./4, La Castellana, Caracas, Venezuela. Tel.: (58-212) 263.6744 - Fax: (58-212) 263.7744 - E-mail: jsanchez@hpdc-abogados.com

Jan SANDSTRÖM
General Average Adjuster, Professor at the University of Gothenburg, former President of the Gothenburg Maritime Law Association, Nilssonsberg 16, Göteborg, Sweden. Tel.: (31) 91.22.90 - Fax. (31) 91.11.97

Ricardo SAN MARTIN PADOVANI
Lawyer and Average Adjuster, Secretary of Chilean Maritime Law Association, Prat 827 Piso 12, Valparaíso, Chile. Tel.: (32) 254.862/213.494 - Fax: (32) 252.622 - E-mail: rsm@entelchile.net
Titular Members

Ricardo SARMIENTO PINEROS
President of the Asociacion Colombiana de Derecho y Estudios Maritimos, Carrera 7 No. 24-89, Oficina 1803, P.O.Box 14590, Bogotà, D.C. Colombia. Tel.: (57-1) 241.0473/241.0475 - Fax: (57-1) 241.0474

Guillermo SARMIENTO RODRIGUEZ
Doctor of law, Abogado, Founder and Honorary President of the Asociacion Colombiana de Derecho y Estudios Maritimos, Carrera 7 No. 24-89, Oficina 1803, P.O.Box 14590, Bogotà, D.C. Colombia. Tel.: (57-1) 241.0473/241.0475 - Fax: (57-1) 241.0474 - E-mail: guisaroz@coll.telecom.com.co

Nicholas G. SCORINIS
Barrister and Solicitor, The Supreme Court of Greece, Principal of Scorinis Law Offices (est. 1969), ex Master Mariner, 67 Iroon Polytechniou Avenue, 18536 Piraeus, Greece. Tel.: (1) 418.1818 - Fax: (1) 418.1822 - E-mail: scorinis@ath.forthnet.gr

William M. SHARPE
Barrister & Solicitor, Suite 203, 1669 Bayview Ave., Toronto, ON M4G 3C1, Canada. Tel. and Fax: (416) 482.5321 - E-mail: wmsharpe@acacnet.net

Richard A.A. SHAW
Solicitor, former Senior Partner and now Consultant to Shaw and Croft, London EC3A 7BU; now Senior Research Fellow at the University of Southampton Institute of Maritime Law, Southampton SO17 1BJ - E-mail: rshaw@soton.ac.uk. Correspondence address: Boldre Grange Cottage, Boldre, Lymington, Hampshire SO41 8PT, United Kingdom. Tel: +44 1590 671159 - Fax: +44 20 82412611

Francesco SICCARDI
Lawyer, Studio Legale Siccardi, Via XX Settembre 37/6, 16121 Genova, Italia. Tel.: (010) 543.951 - Fax: (010) 564.614 - f.siccardi@siccardibregante.it

Patrick SIMON
Avocat à la Cour, SCP Villeneau Rohart Simon & Associés, 15 Place du Général Catroux, 75017 Paris, France. Tel.: (1) 46.22.51.73 - Fax: (1) 47.54.90.78 - E-mail: p.simon@villeneau.com

Panayotis SOTIROPULOS
Docteur en droit, ancien Président et membre de l’Association Hellénique de Droit Maritime, Avocat à la Cour d’Appel et à la Cour de Cassation, Lykavittoü 4, 106 71 Athens, Greece. Tel.: (1) 363.0017/360.4676 - Fax: (1) 364.6674 - E-mail: law-sotiropoulos@ath.forthnet.gr

Mary SPOLLEN (Miss)
National Oil Reserve Agency, 7 Clanwilliam Square, Grand Canal Quay, Dublin 2, Ireland. Tel.: (1) 676.9390 - Fax: (1) 676.9399 E-mail: mary.spollen@nora.ie

Graydon S. STARING
Attorney, Former President of the Maritime Law Association of the United States, Lillick McHose & Charles, Two Embarcadero Center, San Francisco, Ca 94111, U.S.A.

Arthur J. STONE
The Hon. Mr. Justice Stone, Judge Federal Court of Appeal, 90 Sparks Street, Ottawa, ON K1A 0H9. Tel.: (613) 995.4613 - Fax: (613) 941.4969 - E-mail Arthur.stone@fct-cf.gc.ca
Titulary Members

Tova STRASSBERG-COHEN
Judge, President of the Israel Maritime Law Association, Supreme Court, Jerusalem, Israel. Tel.: (2) 759.7171

Michael F. STURLEY
Professor, University of Texas Law School, 727 East Dean Keeton Street, Austin, Texas 78705-3224, U.S.A. Tel.: (1-512) 232.1350 - Fax: (1-512) 471.6988 - E-mail: msturley@mail.law.utexas.edu

Akira TAKAKUWA
Professor of Law at Kyoto University, 24-4 Kichijoji-minamicho 4-chome, Musashino-shi, Tokyo 180-0003, Japan. Tel.: (81-4) 2249.2467 - Fax: (81-4) 2249.0204

Haydee S. TALAVERA (Mrs.)
Doctor of law, Lawyer, Professor of Navigation Law, Faculty of Law at the National Buenos Aires University and La Plata University, Carbajal 3636, C 1430 CBD, Buenos Aires, Argentina. Tel.: (1) 34.7216/30.9141

Hisashi TANIKAWA, Ph. D.
Emeritus Professor of Seikei University, Vice President of the Japanese Maritime Law Association, Honorary Vice President of the CMI, c/o Japan Energy Law Institute, Tanakaya-ma Bldg., 7F, 4-1-20, Toranomon Minato-ku, Tokyo 105-0001, Japan. Tel.: (3) 3434.7701 - Fax: (3) 3434.7703 - E-mail: y-okuma@jeli.gr.jp

Gérard TANTIN
Avocat, 55, Rue Claude Bernard, 75005 Paris, France

Yves TASSEL
Professeur à l’Université de Nantes, Directeur du Centre de droit maritime, Conseiller juridique du Droit Maritime Français, 7 rue docteur Heurteaux, 44000 Nantes, France. Tel.: 40.20.15.47 - Fax: 40.29.19.21

David W. TAYLOR
International Underwriting Association, London Underwriting Centre, 3 Minster Court, London EC3R 7DD, England. Tel.: (44-207) 617.4453 - Fax: (44-207) 617.4440 - E-mail: david.taylor@iua.co.uk

William TETLEY Q.C.
Faculty of Law, McGill University, 3644 Peel Street, Montreal, Quebec H3A 1W9, Canada. Tel.: (514) 398.6619 - Fax: (514) 398.4659 - E-mail: william.tetley@mcgill.ca - Website: http://tetley.law.mcgill.ca

Henrik THAL JANTZEN
Lawyer, the law firm Kromann Reumert, Bredgade 26, 1260 Kobenhavn K., Denmark. Tel.: (33) 933.960 - Fax: (33) 933.950 - E-mail: htj@kromannreumert.com

Jan THEUNIS
Theunis & D’Hoine, Attorneys-at-law, Verbindingsdok-Oostkaai 13, 2000 Antwerpen, Belgium. Tel.: +32 3 470.2300 - Fax: +32 3 470.2310 - E-mail: jan.theunis@diurna.be

Alain TINAYRE
Avocat, Ancien Membre du Conseil de l’Ordre, 43 rue de Courcelles, 75008 Paris, France. Tel.: (1) 53.75.00.43 - Fax: (1) 53.75.00.42
Shûzo TODA  
Emeritus Professor of the University of Chûo, 9-15, 2 chome. Sakurazutsumi, Musashino-Shi, Tokyo, Japan

Lionel TRICOT  
Avocat, Ancien Président de l’Association Belge de Droit Maritime, Professeur Extraordinaire Émérite à la Katholieke Universiteit Leuven, Professeur Émérite à UFSIA-Anvers, Italiëlei 108, B-2000 Antwerpen 1, Belgique. Tel.: (3) 233.2766 - Fax: (3) 231.3675

Sergio TURCI  
Lawyer, Studio Legale Turci, Via R. Ceccardi 4/30, 16121 Genova, Italia. Tel.: (010) 553.5250 - Fax: (010) 595.414 - E-mail: turcilex@turcilex.it

Wagner ULLOA-FERRER  
Lawyer, Past-President Asociacion Venezolana de Derecho Maritimo, Torre Banco Lara, piso 11. Ofic.A-B, Esquina de Mijares, Carmelitas, Caracas, Venezuela. Tel.: (58-212) 864.7686 - Fax (58-212) 864.8119 - E-mail: matheusandulloa@cantv.net

Anders ULRIK  
Barrister, Deputy Director, Assuranceforeningen Skuld and Danish Shipowners’ Defense Association, Frederiksborggade 15, 1360 Kobenhavn K., Denmark. Tel.: (33) 116.861 - Fax: (33) 113.341 - E-mail anders.ulrik@skuld.com

Percy URDAY BERENGUEL  
Doctor of law, Lawyer L.L.M. (London), Calle Chacarilla no. 485, San Isidro, Lima 27, Perú. Tel.: (51) 14224.101 - Fax: (51) 14401.246 - E-mail: murdayab@amauta.tcp.net.pe

Rodrigo URIA GONZALEZ  
Avocat, Catedratico de Derecho Mercantil, C/Jorge Juan 6, 28001 Madrid, Spain

Jozef VAN DEN HEUVEL  
Ancien Bâtonnier et avocat, Professeur Extraordinaire: Vrije Universiteit Brussel, Professeur au RUCA Antwerpen, Frankrijklei 117, B-2000 Antwerpen 1, Belgique

Taco VAN DER VALK  
Advocaat, AKD Prinsen Van Wijmen, P.O.Box 4302, 3006 AH Rotterdam, The Netherlands. Tel.: +31 10 272.5300 - Fax: +31 10 272.5400 - E-mail: tvandervalk@akd.nl

Gertjan VAN DER ZIEL  
Professor of Transportation Law at Erasmus University Rotterdam, President of the Netherlands Maritime Law Association, Doornstraat 23, 3151 VA Hoek van Holland, Netherlands. Tel.: (174) 384.997 - Fax: (174) 387.146 - E-mail: vanderziel@xs4all.nl

Eric VAN HOODYDONK  
Advocate, Professor of Maritime Law and Law of the Sea at the University of Antwerp, Chairman of the European Institute of Maritime and Transport Law, Emiel Banningstraat 21-23, B-2000 Antwerp, Belgium. Tel. +32 3 238.6714 - Fax: +32 3 248.8863 - E-mail: eric.vanhoodydonk@skynet.be

Ernesto VERNAZA  
Doctor of Law, Lawyer, Master of International and Comparative Law in USA, Bachelor in Diplomatic and International Sciences in Ecuador, past Jusge of the High Court of Justice
Titulary Members

in Guayaquil, Professor of Maritime Law and Senior Partner of the Law Firm Apolo, Ver- naza y Asociados, Junin 105 y Malecon, 2nd, 5th and 6th Floor, Intercambio Building, Guayaquil, Ecuador, P.O.Box 3548. Tel.: 593-4-2570700 - Fax: 593-4-2570200 - E-mail: evernaza@gu.pro.ec

Antoine VIALARD
Professeur de Droit Maritime à la Faculté de Droit, des Sciences Sociales et Politiques de l’Université de Bordeaux, Avenue Léon-Duguit, 33600 Pessac, France. Tel.: (5) 56.84.85.58 - Fax: (5) 56.84.29.55 - E-mail: vialard@u-bordeaux4.fr

Ricardo VIGIL TOLEDO
LL.M., (London) Advocate, Past President of the Peruvian Maritime Law Association, Former Chief of Maritime Legislations, UNCTAD, Mariscal Miller 2554, Lima 14, Perú. Tel.: (51-1) 422.3551 - Fax (51-1) 222.5496 - E-mail: vigiltoledo@msn.com

Michael VILLADSEN
Lawyer, Advokaterne, 11-13 Aaboulevarden, DK-8100 Aarhus, Denmark. Tel.: (86) 121.999 - Fax: (86) 121.925 - mv@aaboulevarden.dk

Francisco VILLAROEL-RODRIGUEZ
Villaroel, Rodriguez & Asociados, Av. Universidad, Centro Empresarial, Piso 10, Oficina 10-C, Caracas 1010, Venezuela. Tel.: (58-212) 545.6242 - Fax: (58-212) 542.3618 - E-mail: fvillarr@infoline.wfte.com

Henri VOET Jr.
Docteur en Droit, Dispacheur, Henry Voet-Genicot, Kipdorp, 53,2000, Antwerpen 1, Belgique. Tel.: (3) 218.7464 - Fax: (3) 218.6721

Kenneth H. VOLK
Lawyer, Past President of the MLA of the United States, Partner in McLane, Graf, Raulerson & Middleton, Ten Pleasant Street, P.O.Box 459, Portsmouth, NH 03802-0459, U.S.A. Tel.: (603) 436.2818 - Fax: (603) 436.5672 - E-mail: kenneth.volk@mclane.com

Enzio VOLLI
Professeur de droit maritime, Président du Comité de Trieste de l’Association Italienne de Droit Maritime, Via S. Nicolo 30, 34131 Trieste, Italie. Tel.: (040) 638.384 - Fax: (040) 360.263 - E-mail: info@studiovolli.it

Alexander von ZIEGLER
Associate Professor (Privatdozent) at the University of Zurich, Doctor of Law, LL.M. in Admiralty (Tulane), Attorney at Law, President of the Swiss Maritime Law Association, Partner of Schellenberg Wittmer, Löwenstrasse 19, Postfach 6333, CH-8023 Zürich, Suisse. Tel.: (41-1) 215.5252 - Fax: (41-1) 215.5200 - E-mail: alexander.vonziegler@swlegal.ch

D. J. Lloyd WATKINS
Barrister, 3rd Floor, 78 Fenchurch Street, London EC3M 4BT, England. Tel.: (20) 7488.0078 - Tlx: 884444 - Fax: (20) 7480.7877

Francisco WEIL
Average Adjuster and Honorary Treasurer of the Executive Council of the Argentine Maritime Law Association, c/o Ascoli & Weil, Juan D. Peron 328, 4th Fl., 1038 Buenos-Aires, Argentina. Tel.: (1) 342.0081/3 - Fax: (1) 361.7150
Peter WILLIS LL. B.
Former President of The Maritime Law Association of Australia & New Zealand, Solicitor, 35 Thornton Street, KEW 3101, Australia. Tel.: 861.9828

Frank L. WISWALL, Jr.
J.D., Ph.D.jur. (Cantab) of the Bars of Maine, New York and the U.S. Supreme Court, Attorney and Counselor at Law, Proctor and Advocate in Admiralty, former Chairman of the IMO Legal Committee, Professor at the World Maritime University, the IMO International Maritime Law Institute and the Maine Maritime Academy, Vice-President of the CMI, Meadow Farm, 851 Castine Road, Castine, Maine 04421-0201, U.S.A. Tel.: (207) 326.9460 - Fax: (202) 572.8279 - E-mail: FLW@Silver-Oar.com

Akihiko YAMAMICHI
Attorney at Law, Member of the Japanese Maritime Arbitration, Senior Partner Yamamichi & Uono, 2-10-22, Kugenuma Sakuragaoku, Fujisawa, Kanagawaken, Japan

Tomonobu YAMASHITA
Professor of Law at the University of Tokyo, Sekimae 5-6-11, Musashinoshi, Tokyo 180-0014, Japan. E-mail: yamashita@j.u-tokyo.ac.jp
CONSULTATIVE MEMBERS

Intergovernmental Organizations

INTERNATIONAL MARITIME ORGANIZATION - IMO
Legal & External Relations Division
4 Albert Embankment
London SE1 7SR
UNITED KINGDOM

Att: Rosalie P. Balkin
   Director

INTERNATIONAL OIL POLLUTION COMPENSATION FUND - IOPCF
23rd Floor
Portland House, Stag Place
London SW1E 5PN
UNITED KINGDOM

Att: Mans Jacobsson,
   Director

Other International Organizations

BIMCO
Bagsvaerdvej 161
DK-2880 Bagsvaerd
DENMARK

Att: Mr. Finn Frandsen
   Secretary-General

INDEPENDENT TANK OWNERS POLLUTION FEDERATION - ITOPF
Staple Hall
Stonehouse Court
87-90 Houndsditch
London EC3A 7AX
UNITED KINGDOM

Att: Dr. Ian C. White
   Managing Director

INTERNATIONAL ASSOCIATION OF DRY CARGO SHIPOWNERS - INTERCARGO
9th Floor, St. Clare House
30-33 Minories
London EC3N 1DD
UNITED KINGDOM

Att: Bruce Farthing
   Consultant Director
Consultative Members

INTERNATIONAL ASSOCIATION OF PORTS AND HARBOURS - IAPH
Kono Building
1-23-9 Nishi-Shimbashi
Minato-Ku
105 -0003
JAPAN

INTERNATIONAL CHAMBER OF COMMERCE - ICC
Maritime and Surface Transport Division
38 Cours Albert 1er
F-75008 Paris
FRANCE
Att: Maria Livanos Cattani
Secretary-General

IBERO-AMERICAN INSTITUTE OF MARITIME LAW - IIDM
P.O. Box 784, 1000 San José, Costa Rica
Tel.: (506) 253.4416 - Fax: (506) 225.9320 - E-mail: nassarpe@sol.racsa.co.cr
Att: Tomas F. Nassar
President

INTERNATIONAL ASSOCIATION OF INDEPENDENT TANKER OWNERS - INTER-TANCO
Postboks 7518
Skillebekk
N-0205 Oslo
NORWAY
Att: Svein Ringbakken
Legal Counsel

INTERNATIONAL BAR ASSOCIATION - IBA
271 Regent Street
London W1R 7PA
UNITED KINGDOM
Att: Jonathan Lux
Chairman

INTERNATIONAL CHAMBER OF SHIPPING - ICS
Carthusian Court
12 Carthusian Street
London EC1M 6EB
UNITED KINGDOM
Att: J.C.S. Horrocks
Secretary-General

INTERNATIONAL FEDERATION OF FREIGHT FORWARDERS' ASSOCIATION - FIATA
Baumackerstrasse 24
CH-8050 Zurich
SWITZERLAND
Att: Brian Kelleher
President
Consultative Members

INTERNATIONAL MARITIME INDUSTRIES FORUM - MIF
15A Hanover Street
London W1R 9HG
UNITED KINGDOM
Att: J.G. Davies, C.B.E.
   Chairman

INTERNATIONAL GROUP OF P&I CLUBS - IGP&I
78 Fenchurch Street
London EC3M 4BT
UNITED KINGDOM
Att: D.J. Lloyd Watkins
   Secretary and Executive Officer

INTERNATIONAL UNION OF MARINE INSURANCE - IUMI
Löwenstrasse 19
P.O. Box 6333
CH-8023 Zurich
SWITZERLAND
Att.: Stefan Peller
   General Secretary

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE
1700 North Moore St.
Suite 1900
Arlington, Virginia 22209
Att.: Edward M. Emmett, President

WORLD SHIPPING COUNCIL
1015 15th St. N.W.
Suite 450
Washington, D.C. 20005
Att.: Christopher Koch, President
PART II

The Work of the CMI

CAPE TOWN COLLOQUIUM
12-15 FEBRUARY 2006
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A. SPEECHES

Opening Speech by Andrew Pike
President of the South African Maritime Law Association

Opening Speech by Jean-Serge Rohart
President of the CMI
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 overburdened 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
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.
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
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SUBSEQUENT ACTION
Report on Places of Refuge submitted by the CMI to the IMO Legal Committee " 165
In preparation of the discussion of this subject at the Cape Town Colloquium in February 2006 the Chairman of the International Subcommittee, 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
Letter of Stuart Hetherington to the President of the CMI

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:
Places of Refuge

(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
Places of Refuge

DRAFT INSTRUMENT ON PLACES OF REFUGE

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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.

- 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 Civil Liability for Oil Pollution Damage (CLC), 1969.
- Hazardous and Noxious Substances Convention 1996.
- 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.
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-

* 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.

**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.

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 cooperation 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 Constanța, 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”.

* 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
Places of Refuge

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...
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(HMAS)*. 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.

* 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.
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,

* 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.
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

* 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.
Places of Refuge

- 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

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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.

* 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 State “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
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 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.

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.

\(^3\) IFSMA, “Guideline on the Fair Treatment of Seafarers”, 2\(^{nd}\) 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. Coastal and port states also have certain, strictly limited, rights to take action especially if damage has occurred. 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. 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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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. 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.
The 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.
Fair Treatment of Seafarers

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,

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. 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. 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.

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 ICTFTU, as well as working documents from the CMI and IFSMA, which were appended in a ‘Progress Report from the Correspondence Group’.

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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)
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

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

especially if damage has occurred.\textsuperscript{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.\textsuperscript{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 \textit{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

\textsuperscript{15} UNCLOS, Arts. 21, 25, 27, 218, 220, 225, 226, 228, 231 & 232

\textsuperscript{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.
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?

***
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;
- 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 Hebben, 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*

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* 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
CMI © 2006

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
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 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).
PART II - THE WORK OF THE CMI

Summary of Responses of CMI Members to the Questionnaire, by David Hebden

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 Environment” (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.

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.  

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. 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).

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. The EA aims to protect and enhance the environment and, in so doing, to make a contribution towards the objective of achieving sustainable development. 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
**Fair Treatment of Seafarers**

*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:

1. **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.

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 thoroughly 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 PI 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 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
Aboard 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 partly because SAMSA suffers from both financial and staff constraints.

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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 partly because SAMSA suffers from both financial and staff constraints.

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 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).

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).
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

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).
Fair Treatment of Seafarers

– 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

\(^{28}\) *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.

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.

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.

**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 seafarer 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.
Summary of Responses of CMI Members to the Questionnaire, by David Hebden

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). 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. 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.

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.
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 exist 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).

A crew member, who is exercising his professional duties after using alcohol or other
narcotic substances, duly 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 20 days 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 accomplices, 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.\textsuperscript{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’,\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.

\textbf{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.\textsuperscript{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.\textsuperscript{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:

\textsuperscript{41} Christie v Leachinsky [1947] AC 573, 600.
\textsuperscript{42} A trial on indictment takes place in the Crown Court before a judge and (if the accused pleads not guilty) a jury.
\textsuperscript{43} Supreme Court Act 1981.
\textsuperscript{44} Merchant Shipping Act 1995 s.58.
\textsuperscript{45} Ibid., s.58(2)-(3).
\textsuperscript{46} Police and Criminal Evidence Act 1984, Code C, para 1.1.
\textsuperscript{47} Police and Criminal Evidence Act 1984 s.34(1). The safeguards are set out in Part IV of the Act.
Fair Treatment of Seafarers

- 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:

49 Police and Criminal Evidence Act 1984, Code C.
Summary of Responses of CMI Members to the Questionnaire, by David Hebden

– 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, 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 defendant’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. 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.
Fair Treatment of Seafarers

Finland
According to the Coercive Measures Act (L 450/1987) § 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. It 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 practice, 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. 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 of 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
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-- 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.

\(^{53}\) 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 Merchandise 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 seafarers 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 Affairs 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 9, Sections 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. Part VII – 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.

55 See further the ILO website:
**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, section 1 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 vessel's 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 199656, 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

56 The Merchant Shipping Regulations, 1996 (Prevention of Pollution, Limits), SI 1996/2128 (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. 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.

### 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, 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 Statement, 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 conditions 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 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.

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.

**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
Pollution contrary to the MSA 95. 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, and the servants or agents of the owner are exempt from liability in the absence of wilful or reckless conduct.

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. 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”).

It is also worth mentioning that a new instrument 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

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 seafarer's 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 actions 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\textsuperscript{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\textsuperscript{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 \textit{Ever Decent} (Panamanian flagged container ship) and the \textit{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 9, 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 \textit{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.

\textsuperscript{71} \textit{Ibid.}, Schedule 3A para. 1 (inserted by the Marine Safety Act 2003).
\textsuperscript{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

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 matter 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 detest the suspected person/seafarer and to
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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 detainted 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. Brazilian 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.
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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.
Summary of Responses of CMI Members to the Questionnaire, by David Hebden

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.
Fair Treatment of Seafarers

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/ 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. 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.

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.

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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).
Fair Treatment of Seafarers

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” applies78. 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”.

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).
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. The witness may not claim privilege on the basis that his answer to the question would expose him to civil liability, 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. 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 cannot 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

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 counsel 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**

Not at this stage. Comments and suggestions will be sought from interested parties on any proposals canvassed by the working group.

**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:

Italy
No.

Norway

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.
PART II - THE WORK OF THE CMI

Summary of Responses of CMI Members to the Questionnaire, by David Hebden

– 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


Fair Treatment of Seafarers

– 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 1989 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 (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


Part II - The Work of the CMI

Summary of Responses of CMI Members to the Questionnaire, by David Hebden


– 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 (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 (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


– 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.
Fair Treatment of Seafarers


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.
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A MARINE INSURANCE PERSPECTIVE

BY KIM JEFFERIES

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”\(^4\)

\(^2\) 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.
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

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.
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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offence that does not bear the hallmarks of criminality in the true sense but are rather described as regulatory or public welfare offences. 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.

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.

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 or MARPOL Conventions which have been transformed into offences in national legislation.

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.

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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.


7 See e.g. penal provisions in U.K. maritime legislation such as Merchant Shipping Act 1995 (U.K.), 1995, c. 21, ss.131 and 132. See also Merchant Shipping (Prevention of Oil Pollution) Regulations, 1996, S.I. 1996/2154, reg. 36.

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. The latter are clearly “not criminal in any real sense” but are a species of *malum prohibitum* or technical offence which attract liability without the need to prove *mens rea*.

*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 (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. It is alleged, *inter alia*, that EU legislation cannot validly put member states in breach of their international legal obligations.

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.
(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 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 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. 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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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-

\textit{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 “\textit{wilful} and serious act of pollution”.\textsuperscript{17} Here, the word “\textit{wilful}” clearly indicates that the provision contemplates a \textit{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 \textit{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 \textit{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

\textsuperscript{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\textsuperscript{18} and the Oil Pollution Act\textsuperscript{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\textsuperscript{20} and the Migratory Bird Act.\textsuperscript{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\textsuperscript{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\textsuperscript{23} and the Canadian Environmental Protection Act, 1999\textsuperscript{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.\textsuperscript{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

\begin{itemize}
\item \textsuperscript{18} 33 U.S.C. § 1251 et seq.
\item \textsuperscript{19} 33 U.S.C. §§ 2701-2728 (2000).
\item \textsuperscript{22} R.S.C. 1985, c. S-9.
\item \textsuperscript{23} S.C. 1994, c. 22.
\item \textsuperscript{24} S.C. 1999, c. 33.
\item \textsuperscript{25} There appear to be some exceptions to this general rule with respect to violent crimes.
\end{itemize}
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. The *Tasman Spirit* and *Prestige* cases are prime examples of seafarers being treated as scapegoats for dubious owners with deficient ships.

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 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. 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. In early March, the European Parliament overwhelmingly approved an amended draft of the Directive which criminalises seafarers in the event of accidental pollution. 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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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.
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.\(^\text{36}\) 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.\(^\text{37}\)

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\(^\text{38}\). 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.\(^\text{39}\)

The European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950,\(^\text{40}\) 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.\(^\text{41}\) But none of the above-

\(^{36}\) 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.


\(^{39}\) The issue of capital punishment is a case in point.


\(^{41}\) 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 \textit{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 \textit{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

\(^{42}\) In the case of Captain Dimitrios Karystinos of the \textit{Tasman Spirit}, of course, this Convention was not applicable because Pakistan is not a country of the European Union.

\(^{43}\) Bassiouni, \textit{supra}, note 38 at p. 248.

\(^{44}\) \textit{Ibid.}, at p. 46, fn. 211.

\(^{45}\) \textit{Ibid.}, at p. 46.


\(^{47}\) See Geoffrey Lucas in a letter to the editor of \textit{Lloyd’s List}, 14 July 2005 at p. 4.

\(^{48}\) \textit{Lloyd’s List}, 13 July 2005 at p.2.

\(^{49}\) Michael Grey, \textit{Lloyd’s List}, 1 August 2005, at p. 5.

\(^{50}\) Decision of the European Court of Human Rights in \textit{Osman v. United Kingdom} (1998), ECHR Series A, No. 3, para. 11.

\(^{51}\) Fitzpatrick and Anderson, \textit{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.
55 See IMO Doc. MSC 79/5/8 submitted by ICS, BIMCO, INTERCARGO, INTERTANKO and SIGTTO.
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 seafarers 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

61 de Bievre, supra, note 59.
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


\(^{64}\) 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 criminalisation 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, 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.” It is about time that states much

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**Notes**

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.\footnote{See de Bievre, \textit{supra}, note 59.}

The grim situation regarding the treatment of seafarers must be turned around before it is too late otherwise no young person in the 21\textsuperscript{st} 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.
D. RULES OF PROCEDURE
IN LIMITATION CONVENTIONS

Introduction to the Presentation of the Responses to the Questionnaire
by Gr. J. Timagenis

Analysis of the Responses to the Questionnaire
by Francesco Berlingieri and Gregory Timagenis

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
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 fund 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
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**


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 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**

Digest of the Responses received

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


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
Rules of Procedure in Limitation Conventions

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


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 642a (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).

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. E.g. 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.
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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 642a (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. 642a (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).

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.
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**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 642c (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 642v CCP. Finally, the applicant must also provide security for the costs of the limitation proceedings (Article 642c (2) a) CCP).

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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 judgment 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.
Rules of Procedure in Limitation Conventions

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 642c (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 642c (6) CCP). If the

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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 642c (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 642c (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 642f (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 642f (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.
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.
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(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.\(^\text{10}\)

HNS Convention
Ship owner must demonstrate that he is entitled to limit his liability under HNS.\(^\text{11}\)

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.

\(^{10}\) 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 642a (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.
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 642a (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 642f and Article 642g (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 642i and Article 642g (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 642m and Article 642i (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 642u (2) and Article 642i CCP).

New Zealand
CLC and LLCM Convention
Yes; directions as to time limits for entering an appearance and/or filing a defence are notified

Norway
CLC and LLCM 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 LLCM 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.
Digest of the Responses received

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)\(^\text{12}\). 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.\(^\text{13}\) Failure to file a claim within this period will mean that the action is statute barred.

*HNS Convention*

Same as LLMC above.

\(^{12}\) 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 642g (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 642k 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 642l (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 642w 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. 642o (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 642o (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 seq. 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 642l (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 642l (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 642l (m) CCP).

The second stage in the assessment of claims takes place at the verification hearing(s) of the Court (Article 642n CCP). At these hearings, each party (whether creditor or debtor) may dispute any or all of the filed claims by the (other) creditors (Article 642p (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 642p (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 642p (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 642q (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 642s (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 tolar.

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 partly 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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17 Section 12(2) Oil Pollution of the Sea (Civil Liability and Compensation) Act 1988.
Digest of the Responses received

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 642j 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 may 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 may 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 distraint 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.
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

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

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

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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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 642l (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 642s (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 642s (1) CCP). The Court may also issue a provisional statement of distribution (Article 642x (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).

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).
Rules of Procedure in Limitation Conventions

Slovenia  
\textit{CLC}  
A plan for the distribution must be prepared by the court.

Sweden  
\textit{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  
\textit{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).

\textbf{QUESTION (m):}  
\textit{Whether the plan may be challenged and how.}

Argentina  
\textit{CLC}  
See (h).

Australia  
\textit{CLC and LLMC Convention}  
Directions can be sought from the Court.

Belgium  
\textit{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  
\textit{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  
\textit{CLC}  
Also see the answer to question (l).

Denmark  
\textit{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 642u (1) CCP), who will be given proper notification (Article 642u (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 642u (3) CCP). This decision of the limitation Court pursuant to Article 642u (3) CCP is neither subject to appeal, nor to appeal in cassation (Article 642y (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.
PART II - THE WORK OF THE CMI

Digest of the Responses received

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 642r (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 in 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

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 “Schifffahrtsrechtliche 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 I 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 642f(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 642f(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

Page 376
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 prerequisite.

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.
Part II: The Work of the CMI

Draft Convention, by Patrick Griggs

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
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 Insurance

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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.comicfram.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

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](http://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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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 Catelli ecatelli@hollsteinkeating.com
Dr Sarah Derrington s.derrington@law.uq.edu.au
Mr Christian Hübner Christian.hubner@axa.fr
Prof Dr Marc Huybrechts youbelex@telonet.be
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
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). 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. 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 session¹² 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.

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 États dont le nom est suivi par un astérisque ont fait des réserves. Un ré-
sumé du texte de ces réserves est publié après la liste des ratifications de chaque Con-
vention.

(3) - Les dates mentionnées pour la dénonciation sont les dates à lesquelles la
démonciation prend effet.
STATUS OF THE RATIFICATIONS OF AND ACCESSIONS TO THE BRUSSELS INTERNATIONAL MARITIME LAW CONVENTIONS

(Information provided by the Ministère des Affaires Étrangères, du Commerce Extérieur et de la Coopération au Développement de Belgique, depositary of the Conventions).

Editor's notes:

(1) - The dates mentioned are the dates of the deposit of instruments. The indication (r) stands for ratification, (a) for accession.

(2) - The States whose names are followed by an asterisk have made reservations. The text of such reservations is published, in a summary form, at the end of the list of ratifications of each convention.

(3) - The dates mentioned in respect of the denunciation are the dates when the denunciation takes effect.
### Abordage 1910  
Convention internationale pour l’unification de certaines règles en matière d’Abordage et protocole de signature  
Bruxelles, le 23 septembre 1910  
Entrée en vigueur: 1er mars 1913  

(Translation)  

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\(^{(1)}\) With letter dated 4 June 1997 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the 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.
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(3) Pursuant to a notification of the Ministry of foreign affairs of the Russian Federation dated 13th January 1992, the Russian Federation is now a party to all treaties to which the U.S.S.R. was a party. Russia had ratified the convention on the 1st February 1913.
Convention internationale pour l’unification de certaines règles en matière d’Assistance et de sauvetage maritimes et protocole de signature
Bruxelles, le 23 septembre 1910
Entrée en vigueur: 1 mars 1913

International convention for the unification of certain rules of law relating to Assistance and salvage at sea and protocol of signature
Brussels, 23rd September, 1910
Entered into force: 1 March 1913

(Translation)

Algeria (a) 13.IV.1964
Angola (a) 20.VII.1914
Antigua and Barbuda (a) 1.II.1913
**Part III - Status of Ratifications to Brussels Conventions**

*Assistance et sauvetage 1910*  
*Assistance and salvage 1910*

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¹ With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

² With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Salvage Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.
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 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) 13.X.1993  
Somalia (a) 1.II.1913  
Spain (a) 17.XI.1923  

*(denunciation 19.1.2006)*

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           (a)                           1.II.1913
( denounced 12.XII.1994 effective also for
Falkland Islands, Montserrat, South Georgia
and South Sandwich Islands)
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

Austria                           (r)                           4.IV.1974
Belgium                           (r)                           11.IV.1973
Brazil                           (r)                           8.XI.1982
Croatia                          (r)                           8.X.1991
( denounced 16.III.2000)

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.
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Convention internationale pour l’unification de certaines règles en matière de Connaissance et protocole de signature “Règles de La Haye 1924”

Bruxelles, le 25 août 1924
Entrée en vigueur: 2 juin 1931

International convention for the unification of certain rules of law relating to Bills of lading and protocol of signature “Hague Rules 1924”

Brussels, 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

(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

(Translation)

(1) With letter dated 4 June 1997 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People’s Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People’s Republic of China.

(2) With letter dated 15 October 1999 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People’s Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People’s Republic of China.
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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
(Serbia – 1.III.1984)
Switzerland (a) 28.V.1954
Syrian Arab Republic (a) 1.VIII.1974
Tanzania (United Republic of) (a) 3.XI.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
(Serbia – 13.VI.1977)
Gibraltar (a) 2.XII.1930
(Serbia – 22.IX.1977)
Bermuda, Falkland Islands and dependencies, Turks & Caicos Islands, Cayman Islands, British Virgin Islands, Montserrat, British Antarctic Territories.
(Serbia – 20.X.1983)
Anguilla (a) 2.XII.1930
Ascension, Saint Helene 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 États contractants ne soulevent aucune objection à ce que l’application des dispositions de la Convention soit limitée de la manière suivante en ce qui concerne le Danemark:
1) La Loi sur la navigation danoise en date du 7 mai 1937 continuera à permettre que dans le cabotage national les connaissances et documents similaires soient émis conformément aux prescriptions de cette loi, sans que les dispositions de la Convention leur soient appliquées aux rapports du transporteur et du porteur du document déterminés par ces titres.
2) Sera considéré comme équivalent au cabotage national sous les rapports mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en vertu de l’article 122, dernier alinéa, de la loi danoise sur la navigation - le transport maritime entre le Danemark et les autres États nordiques, dont les lois sur la navigation contiennent des dispositions analogues.
3) Les dispositions des Conventions internationales concernant le transport des voyageurs et des bagages et concernant le transport des marchandises par chemins de fer, signées à Rome, le 23 novembre 1933, ne seront pas affectées par cette Convention.”

**Egypt**
...Nous avons résolu d’adhérer par les présentes à la dite Convention, et promettions de concourir à son application. L’Égypte est, toutefois, d’avis que la Convention, dans sa totalité, ne s’applique pas au cabotage national. En conséquence, l’Égypte se réserve le droit de régler librement le cabotage national par sa propre législation...

**France**
...En procédant à ce dépôt, l’Ambassadeur de France à Bruxelles déclare, conformément à l’article 13 de la Convention précitée, que l’acceptation que lui donne le Gouvernement Français ne s’applique à aucune des colonies, possessions, protectorats ou territoires d’outre-mer se trouvant sous sa souveraineté ou son autorité.

**Ireland**
...Subject to the following declarations and reservations: 1. In relation to the carriage of goods by sea in ships carrying goods from any port in Ireland to any other port in Ireland or to a port in the United Kingdom, Ireland will apply Article 6 of the Convention as though the Article referred to goods of any class instead of to particular goods, and as though the proviso in the third paragraph of the said Article were omitted; 2. Ireland does not accept the provisions of the first paragraph of Article 9 of the Convention.
Ivory Coast

Le Gouvernement de la République de Côte d’Ivoire, en adhérant à ladite Convention précise que:
1) Pour l’application de l’article 9 de la Convention relatif à la valeur des unités monétaires employées, la limite de responsabilité est égale à la contre-valeur en francs CFA sur la base d’une livre or égale à deux livres sterling papier, au cours du change de l’arrivée du navire au port de déchargement.
2) Il se réserve le droit de réglementer par des dispositions particulières de la loi nationale le système de la limitation de responsabilité applicable aux transports maritimes entre deux ports de la république de Côte d’Ivoire.

Japan

Statement at the time of signature, 25.8.1925.

Au moment de procéder à la signature de la Convention Internationale pour l’unification de certaines règles en matière de connaissement, le soussigné, Pléniépotentiaire du Japon, fait les réserves suivantes:

a) À l’article 4.
Le Japon se réserve jusqu’à nouvel ordre l’acceptation des dispositions du a) à l’alinéa 2 de l’article 4.

b) Le Japon est d’avis que la Convention dans sa totalité ne s’applique pas au cabotage national; par conséquent, il n’y aurait pas lieu d’en faire l’objet de dispositions au Protocole. Toutefois, s’il n’en pas ainsi, le Japon se réserve le droit de régler librement le cabotage national par sa propre législation.

Statement at the time of ratification

...Le Gouvernement du Japon déclare
1) qu’il se réserve l’application du premier paragraphe de l’article 9 de la Convention; 2) qu’il maintient la réserve b) formulée dans la Note annexée à la lettre de l’Ambassadeur du Japon à Monsieur le Ministre des Affaires étrangères de Belgique, du 25 août 1925, concernant le droit de régler librement le cabotage national par sa propre législation; et 3) qu’il retire la réserve a) de ladite Note, concernant les dispositions du a) à l’alinéa 2 de l’article 4 de la Convention.

Kuwait

Le montant maximum en cas de responsabilité pour perte ou dommage causé aux marchandises ou les concernant, dont question à l’article 4, paragraphe 5, est augmenté jusqu’à £ 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
Règles de La Haye

concourir à son application, tout en Nous réservant le droit, par prescription légale,
1) de préciser que dans les cas prévus par l’article 4, par. 2 de c) à p) de la Convention,
le porteur du connaissement peut établir la faute personnelle du transporteur ou les fautes
de ses préposés non couverts par l’article 4, par. 2 a) de la Convention;
2) d’appliquer, en ce qui concerne le cabotage national, l’article 6 à toutes les
catégories de marchandises, sans tenir compte de la restriction figurant au dernier
paragraphe dudit article, et sous réserve:
1) que l’adhésion à la Convention ait lieu en faisant exclusion du premier
paragraphe de l’article 9 de la Convention;
2) que la loi néerlandaise puisse limiter les possibilités de fournir des preuves
contraires contre le connaissement.

Norway
...L’adhésion de la Norvège à la Convention internationale pour l’unification de certaines
règles en matière de connaissement, signée à Bruxelles, le 25 août 1924, ainsi qu’au
Protocole de signature y annexé, est donnée sous la réserve que les autres États
contractants ne soulèvent aucune objection à ce que l’application des dispositions de la
Convention soit limitée de la manière suivante en ce qui concerne la Norvège:
1) La loi sur la navigation norvégienne continuera à permettre que dans le cabotage
national les connaissements et documents similaires soient émis conformément aux
prescriptions de cette loi, sans que les dispositions de la Convention leur soient
appliquées ou soient appliquées aux rapports du transporteur et du porteur du
document déterminés par ces titres.
2) Sera considéré comme équivalent au cabotage national sous les rapports
mentionnés au paragraphe 1) - au cas où une disposition serait édictée en ce sens en
vertu de l’article 122, dernier alinéa, de la loi norvégienne sur la navigation - le
transport maritime entre la Norvège et autres États nordiques, dont les lois sur la
navigation contiennent des dispositions analogues.
3) Les dispositions des Conventions internationales concernant le transport des
voyageurs et des bagages et concernant le transport des marchandises par chemins de fer,
signées à Rome le 23 novembre 1933, ne seront pas affectées par cette Convention.

Papua New Guinea
Reservations: a) the right to exclude from the operation of legislation passed to give
effect to the Convention on the carriage of goods by sea which is not carriage in the
course of trade or commerce with other countries or among the territories of Papua and
New-Guinea; b) the right to apply Article 6 of the Convention in so far as the national
coasting trade is concerned to all classes of goods without taking account of the
restriction set out in the 1st paragraph of that Article.

Switzerland
...Conformément à l’alinéa 2 du Protocole de signature, les Autorités fédérales se
réservent de donner effet à cet acte international en introduisant dans la législation suisse
les règles adoptées par la Convention sous une forme appropriée à cette législation.

United Kingdom
...I Declare that His Britannic Majesty’s Government adopt the last reservation in the
additional Protocol of the Bills of Lading Convention. I Further Declare that my
signature applies only to Great Britain and Northern Ireland. I reserve the right of each
of the British Dominions, Colonies, Overseas Possessions and Protectorates, and of
each of the territories over which his Britannic Majesty exercises a mandate to accede
to this Convention under Article 13. “...In accordance with Article 13 of the above
named Convention, I declare that the acceptance of the Convention given by His
Britannic Majesty in the instrument of ratification deposited this day extends only to
the United Kingdom of Great Britain and Northern Ireland and does not apply to any
of His Majesty’s Colonies or Protectorates, or territories under suzerainty or mandate.
United States of America

...And whereas, the Senate of the United States of America by their resolution of April 1 (legislative day March 13), 1935 (two-thirds of the Senators present concurring therein), did advise and consent to the ratification of the said convention and protocol of signature thereto, ‘with the understanding, to be made a part of such ratification, that, not withstanding the provisions of Article 4, Section 5, and the first paragraph of Article 9 of the convention, neither the carrier nor the ship shall in any event be or become liable within the jurisdiction of the United States of America for any loss or damage to or in connection with goods in an amount exceeding 500.00 dollars, lawful money of the United States of America, per package or unit unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

And whereas, the Senate of the United States of America by their resolution of May 6, 1937 (two-thirds of the Senators present concurring therein), did add to and make a part of their aforesaid resolution of April 1, 1935, the following understanding: That should any conflict arise between the provisions of the Convention and the provisions of the Act of April 16, 1936, known as the ‘Carriage of Goods by Sea Act’, the provisions of said Act shall prevail:

Now therefore, be it known that I, Franklin D. Roosevelt, President of the United States of America, having seen and considered the said convention and protocol of signature, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof, subject to the two understandings hereinabove recited and made part of this ratification.

Protocole portant modification de
la Convention Internationale pour
l’unification de certaines
règles en matière de
connaissances, signée à Bruxelles
le 25 août 1924
Règles de Visby
Bruxelles, 23 février 1968
Entrée en vigueur: 23 juin 1977

Protocol to amend the
International Convention for
the unification of certain
rules of law relating to
bills of lading, signed at Brussels
on 25 August 1924
Visby Rules
Brussels, 23rd February 1968
Entered into force: 23 June, 1977

Belgium (r) 6.IX.1978
China (r) 1.XI.1980
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.
### Règles de Visby

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### Reservations

**Egypt Arab Republic**

La République Arabe d’Égypte déclare dans son instrument de ratification qu’elle ne se considère pas liée par l’article 8 du présent 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 connaissance telle qu’amendée par le Protocole de modification du 23 février 1968.

Protocole DTS

Bruxelles, le 21 décembre 1979
Entrée en vigueur: 14 février 1984

Australia (a) 16.VII.1993
Belgium (r) 7.IX.1983
China (a) 20.X.1983
Denmark (a) 3.XI.1983
Finland (r) 1.XII.1984
France (r) 18.XI.1986
Georgia (a) 20.II.1996
Greece (a) 23.III.1993
Italy (r) 22.VIII.1985
Japan (r) 1.III.1993
Mexico (a) 20.V.1994
Netherlands (r) 18.II.1986
New Zealand (a) 20.XII.1994
Norway (r) 1.XII.1983
Poland* (r) 6.VII.1984
Russian Federation (a) 29.IV.1999
Spain (r) 6.I.1982
Sweden (r) 14.XI.1983
Switzerland* (r) 20.I.1988
United Kingdom of Great-Britain and Northern Ireland (r) 2.III.1982
Bermuda, British Antarctic Territories, Virgin Islands, Caymans, Falkland Islands & Dependencies, Gibraltar, Isle of Man, Montserrat, Caicos & Turks Island (extension) (a) 20.X.1983

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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 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 connaissai sement, telle qu’amendée par le Protocole de modification du 23 février 1968, remplacé par l’article II du Protocole du 21 décembre 1979, que la Suisse calcule de la manière suivante la valeur, en droit de tirage spécial (DTS), de sa monnaie nationale:
La Banque nationale suisse (BNS) communique chaque jour au Fonds monétaire international (FMI) le cours moyen du dollar des États Unis d’Amérique sur le marché des changes de Zürich. La contre-valeur 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.

Concentration 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

(Translation)

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) 2.VI.1930

(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
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**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’État**

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
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.

### Reservations

**United Kingdom**

We reserve the right to apply Article 1 of the Convention to any claim in respect of a ship which falls within the Admiralty jurisdiction of Our courts, or of Our courts in any territory in respect of which We are party to the Convention. We reserve the right, with respect to Article 2 of the Convention to apply in proceedings concerning another High Contracting Party or ship of another High Contracting Party the rules of procedure set out in Chapter II of the European Convention on State Immunity, signed at Basle on the Sixteenth day of May, in the Year of Our Lord One thousand Nine hundred and Seventy-two.

In order to give effect to the terms of any international agreement with a non-Contracting State, We reserve the right to make special provision:

(a) as regards the delay or arrest of a ship or cargo belonging to such a State, and (b) to prohibit seizure of or execution against such a ship or cargo.
**Compétence civile 1952**

**Civil jurisdiction 1952**

**Convention internationale pour l’unification de certaines règles relatives à la Compétence civile en matière d’abordage**

Bruxelles, 10 mai 1952

Entrée en vigueur:
14 septembre 1955

**International convention for the unification of certain rules relating to Civil jurisdiction in matters of collision**

Brussels, 10th May 1952

Entered into force:
14 September 1955

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*(1)* With letter dated 4 June 1997 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People’s Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People’s Republic of China.

*(2)* The extension of the Convention to the territory of Macao has been notified by Portugal with declaration deposited on 23 March 1999.

With letter dated 15 October 1999 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People’s Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People’s Republic of China.
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Reservations

Costa-Rica
(Traduction) Le Gouvernement de la République du Costa Rica, en adhérant à cette Convention, fait cette réserve que l’action civile du chef d’un abordage survenu entre navires de mer ou entre navires de mer et bateaux de navigation intérieure, pourra être intentée uniquement devant le tribunal de la résidence habituelle du défendeur ou de l’Etat dont le navire bat pavillon.
En conséquence, la République du Costa Rica ne reconnaît pas comme obligatoires les literas b) et c) du premier paragraphe de l’article premier.
“Conformément au Code du droit international privé approuvé par la sixième Conférence internationale américaine, qui s’est tenue à La Havane (Cuba), le Gouvernement de la République du Costa Rica, en acceptant cette Convention, fait cette réserve expresse que, en aucun cas, il ne renoncera à sa compétence ou juridiction pour appliquer la loi costaricienne en matière d’abordage survenu en haute mer ou dans ses eaux territoriales au préjudice d’un navire costaricien.

Croatia
Reservation made by Yugoslavia and now applicable to Croatia: “Le Gouvernement de la République Populaire Fédérative de Yougoslavie se réserve le droit de se déclarer au moment de la ratification sur le principe de “sistership” prévu à l’article 1° lettre (b) de cette Convention.

Khmeré 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
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(1) With letter dated 4 June 1997 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Penal Jurisdiction Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People’s Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People’s Republic of China.

The following declarations have been made by the Government of the People’s Republic of China:

1. The Government of the People’s Republic of China reserves, for the Hong Kong Special Administrative Region, the right not to observe the provisions of Article 1 of the Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ships to which that ship belongs consented to the institution of criminal or disciplinary proceedings before the judicial or administrative authorities of the Hong Kong Special Administrative Region.

2. In accordance with Article 4 of the Convention, the Government of the People’s Republic of China reserves, for the Hong Kong Special Administrative Region, the right to take proceedings in respect of offences committed within the waters under the jurisdiction of the Hong Kong Special Administrative Region.

(2) The extension of the Convention to the territory of Macao has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People’s Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People’s Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People’s Republic of China.
### Compétence pénale 1952

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Reservations

Antigua, Cayman Island, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent
The Governments of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla (now the independent State of Anguilla), St. Helena and St. Vincent reserve the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ship to which that ship belongs assented to the institution of criminal or disciplinary proceedings before judicial or administrative authorities in Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent. They reserve the right under Article 4 of this Convention to take proceedings in respect of offences committed within the territorial waters of Antigua, the Cayman Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Helena and St. Vincent.

Argentina
(Traduction) La République Argentine adhère à la Convention internationale pour l’unification de certaines règles relatives à la compétence pénale en matière d’abordage et autres événements de navigation, sous réserve expresse du droit accordé par la seconde partie de l’article 4, et il est fixé que dans le terme “infractions” auquel cet article se réfère, se trouvent inclus les abordages et tout autre événement de la navigation visés à l’article 1° de la Convention.

Bahamas
...Subject to the following reservations:
(a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, assented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of the Bahamas;
(b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of the Bahamas.

Belgium
...le Gouvernement belge, faisant usage de la faculté inscrite à l’article 4 de cette Convention, se réserve le droit de poursuivre les infractions commises dans les eaux territoriales belges.

Belize
...Subject to the following reservations:
(a) the right not to observe the provisions of Article 1 of the said Convention in the case of any ship if the State whose flag the ship was flying has, as respects that ship or any class of ship to which that ship belongs, consented to the institution of criminal and disciplinary proceedings before judicial or administrative authorities of Belize;
(b) the right under Article 4 of the said Convention to take proceedings in respect of offences committed within the territorial waters of Belize.

Cayman Islands
See Antigua.

China
Macao
The Government of the People’s Republic of China reserves, for the Macao Special Administrative Region, the right not to observe the provisions of Article 1 of the
Convention in the case of any ship if the State whose flag the ship was flying has as respects that ship or any class of ships to which that ship belongs consented to the institution of criminal or disciplinary proceedings before the judicial or administrative authorities of the Macao Special Administrative Region.

In accordance with Article 4 of the Convention, the Government of the People's Republic of China reserves, for the Macao Special Administrative Region, the right to take proceedings in respect of offences committed within the waters under the jurisdiction of the Macao Special Administrative Region.

Within the above ambit, the Government of the People's Republic of China will assume the responsibility for the international rights and obligations that place on a Party to the Convention.

**Costa-Rica**

*Traduction* Le Gouvernement de Costa-Rica ne reconnaît pas le caractère obligatoire des articles 1ᵉʳ et 2ᵉ 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*
Compétence pénale 1952

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.
Constitution 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
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Belgium (r) 10.IV.1961
Belize* (a) 21.IX.1965
Benin (a) 23.IV.1958
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   Hong Kong(1) (a) 29.III.1963
   Macao(2) (a) 23.IX.1999
Comoros (a) 23.IV.1958
Congo (a) 23.IV.1958
Costa Rica* (a) 13.VII.1955
Côte d’Ivoire (a) 23.IV.1958
Croatia* (r) 8.X.1991
Cuba* (a) 21.XI.1983
Denmark (r) 2.V.1989
Djibouti (a) 23.IV.1958
Dominica, Republic of* (a) 12.V.1965
Egypt* (r) 24.VIII.1955
Fiji (a) 29.III.1963
Finland (r) 21.XII.1995
France (r) 25.V.1957
Overseas Territories (a) 23.IV.1958
Gabon (a) 23.IV.1958

(1) With letter dated 4 June 1997 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Arrest Convention will continue to apply to the Hong Kong Special Administrative Region with effect from 1 July 1997. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.

(2) The extension of the Convention to the territory of Macao as from 23 September 1999 has been notified by Portugal with declaration deposited on 23 March 1999. With letter dated 15 October 1999 the Embassy of the People's Republic of China in the Kingdom of Belgium informed the Minister of Foreign Affairs of Belgium that the Convention will continue to apply to the Macao Special Administrative Region with effect from 20 December 1999. In its letter the Embassy of the People's Republic of China stated that the responsibility for the international rights and obligations arising from the application of the above Convention will be assumed by the Government of the People's Republic of China.
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Saisie des navires 1952

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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 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 a déclaré formuler les réserves prévues à l’article 10.
Confirmation expresse des réserves faites au moment de la signature.

Germany, Federal Republic of
(Traduction) ...sous réserve du prescrit de l’article 10, alinéas a et b.

Grenada
Same reservation as Antigua.

Guyana
Same reservation as the Bahamas.

Ireland
Ireland reserves the right not to apply the provisions of the Convention to warships or to ships owned by or in service of a State.

Italy
Le Gouvernement de la République d’Italie se réfère à l’article 10, par. (a) et (b), et se réserve:
(a) le droit de ne pas appliquer les dispositions de la présente Convention à la saisie d’un navire pratiquée en raison d’une des créances maritimes visées aux o) et p) de l’article premier et d’appliquer à cette saisie sa loi nationale;
(b) le droit de ne pas appliquer les dispositions du premier paragraphe de l’article 3 à la saisie pratiquée sur son territoire en raison des créances prévues à l’alinéa q) de l’article 1.

Khmere Republic
Le Gouvernement de la République Khmère en adhérant à cette convention formule les réserves prévues à l’article 10.

Kiribati
Same reservation as the Bahamas.

Mauritius
Same reservation as Antigua.

Netherlands
Réserves formulées conformément à l’article 10, paragraphes (a) et (b):
- les dispositions de la Convention précitée ne sont pas appliquées à la saisie d’un navire pratiquée en raison d’une des créances maritimes visées aux alinéas o) et p) de l’article 1, saisie à laquelle s’applique le loi néerlandaise; et
- les dispositions du premier paragraphe de l’article 3 ne sont pas appliquées à la saisie pratiquée sur le territoire du Royaume des Pays-Bas en raison des créances prévues à l’alinéa q) de l’article 1.
Cette ratification est valable depuis le 1er janvier 1986 pour le Royaume des Pays-Bas, les Antilles néerlandaises et Aruba.

Nigeria
Same reservation as Antigua.

North Borneo
Same reservation as Antigua.

Russian Federation
The Russian Federation reserves the right not to apply the rules of the International Convention for the unification of certain rules relating to the arrest of sea-going ships of 10 May 1952 to warships, military logistic ships and to other vessels owned or operated by the State and which are exclusively used for non-commercial purposes.
Pursuant to Article 10, paragraphs (a) and (b), of the International Convention for the
unification of certain rules relating to the arrest of sea-going ships, the Russian Federation reserves the right not to apply:
– the rules of the said Convention to the arrest of any ship for any of the claims enumerated in Article 1, paragraph 1, subparagraphs (o) and (p), of the Convention, but to apply the legislation of the Russian Federation to such arrest;
– the first paragraph of Article 3 of the said Convention to the arrest of a ship, within the jurisdiction of the Russian Federation, for claims set out in Article 1, paragraph 1, subparagraph (q), of the Convention.

St. Kitts and Nevis
Same reservation as Antigua.

St. Lucia
Same reservation as Antigua.

St. Vincent and the Grenadines
Same reservation as Antigua.

Sarawak
Same reservation as Antigua.

Seychelles
Same reservation as the Bahamas.

Solomon Islands
Same reservation as the Bahamas.

Tonga
Same reservation as Antigua.

Turk Isles and Caicos
Same reservation as the Bahamas.

Tuvalu
Same reservation as the Bahamas.

United Kingdom of Great Britain and Northern Ireland
... Subject to the following reservations:
1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.

United Kingdom (Overseas Territories)
    Anguilla, Bermuda, British Virgin Islands, Caiman Islands, Falkland Islands and Dependencies, Gibraltar, Guernsey, Hong Kong, Montserrat, St. Helena, Turks Isles and Caicos
... Subject to the following reservations:
1. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right not to apply the provisions of the said Convention to warships or to vessels owned by or in the service of a State.
2. The Government of the United Kingdom of Great Britain and Northern Ireland reserve the right in extending the said Convention to any of the territories for whose international relations they are responsible to make such extension subject to the reservations provided for in Article 10 of the said Convention.
### 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**

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Limitation of liability 1957

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Reservations

Bahamas
Subject to the same reservations as those made by the United Kingdom on ratification namely the reservations set out in sub-paragraphs (a) and (b) of paragraph (2) of the Protocol of Signature.

Barbados
Same reservation as Bahamas

China
The Government of the People’s Republic of China reserves, for the Macao Special Administrative Region, the right not to be bound by paragraph 1.(c) of Article 1 of the
Convention. The Government of the People’s Republic of China reserves, for the Macao Special Administrative Region, the right to regulate by specific provisions of laws of the Macao Special Administrative Region the system of limitation of liability to be applied to ships of less than 300 tons. With reference to the implementation of the Convention in the Macao Special Administrative Region, the Government of the People’s Republic of China reserves, for the Macao Special Administrative Region, the right to implement the Convention either by giving it the force of law in the Macao Special Administrative Region, or by including the provisions of the Convention, in appropriate form, in legislation of the Macao Special Administrative Region. Within the above ambit, the Government of the People’s Republic of China will assume the responsibility for the international rights and obligations that place on a Party to the Convention.

**Denmark**
Le Gouvernement du Danemark se réserve le droit:
1) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 tonnes 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.
Limitation de responsabilité 1957

Note: Le Gouvernement des Pays-Bas avait fait les réservations suivantes:
Le Gouvernement des Pays-Bas se réserve le droit:
1) d’exclure l’application de l’article 1, paragraphe (1)(c);
2) de régler par la loi nationale le système de limitation de responsabilité applicable aux navires de moins de 300 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 Pauupsa 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, 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
**Stowaways 1957**

**Carriage of passengers 1961**

Luxembourg (a) 18.II.1991
Poland (r) 6.VII.1984
Portugal (r) 30.IV.1982
Spain (r) 14.V.1982

*(denunciation - 04.I. 2006)*

Switzerland (r) 20.I.1988

**United Kingdom of Great Britain and Northern Ireland** (r) 2.III.1965

*(denunciation – I.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 – I.XII.1985)*

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**Convention internationale sur les Passagers Clandestins**

Bruxelles, 10 octobre 1957

Pas encore en vigueur

**International convention relating to Stowaways**

Brussels, 10\(^{th}\) 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

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**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, 29\(^{th}\) 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)*

Haiti (a) 19.IV.1989
Iran (a) 26.IV.1966
Carriage of passengers 1961

<table>
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<td>Zaire</td>
<td>(a) 17.VII.1967</td>
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</tbody>
</table>

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 considérées 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

International convention relating to the liability of operators of Nuclear ships and additional protocol

Bruxelles, 25 mai 1962
Pas encore en vigueur

<table>
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<th>Country</th>
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<td>(r) 20.III.1974</td>
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<td>Surinam</td>
<td>(r) 20.III.1974</td>
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<td>Syrian Arab Republic</td>
<td>(a) 1.VIII.1974</td>
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<td>Zaire</td>
<td>(a) 17.VII.1967</td>
</tr>
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</table>
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
International Convention for the unification of certain rules relating to Maritime liens and mortgages

Brussels, 27th May 1967
Not yet in force

Denmark*
23.VIII.1977

Morocco*
12.II.1987

Norway*
13.V.1975

Sweden*
13.XI.1975

Syrian Arab Republic
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 îles Féroé les mesures d’application n’ont pas encore été fixées.

Morocco

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
2. Les dates mentionnées sont les dates du dépôt des instruments.
3. L’asterisque qui suit le nom d’un Etat indique que cet Etat a fait une déclaration, une réserve ou une communication dont le texte est publié à la fin de chaque état de ratifications et adhésions.
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

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### Convention Internationale sur la Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures (CLC 1969)

Signée à Bruxelles, le 29 novembre 1969  
Entrée en vigueur: 19 juin 1975
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<td>Yemen (accession)</td>
<td>6.III.1979</td>
<td>4.VI.1979</td>
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</tr>
</tbody>
</table>

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.
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 1, 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):

"In connection with the declaration made by the Government of the Federal Republic of Germany on 20 May 1975 concerning the application of the International Convention on Civil Liability for Oil Pollution Damage of 29 November 1969 to Berlin (West), it is the understanding of the German Democratic Republic that the provisions of the Convention may be applied to Berlin (West) only inasmuch as this is consistent with the Quadripartite Agreement of 3 September 1971, under which Berlin (West) is no constituent part of the Federal Republic of Germany and must not be governed by it.”

“...The Government of the German Democratic Republic considers that the provisions of article XI, paragraph 2, of the Convention are inconsistent with the principle of immunity of States.”

The Government of the German Democratic Republic considers that the provisions of article XIII, paragraph 2, of the Convention are inconsistent with the principle that all States pursuing their policies in accordance with the purposes and principles of the Charter of the United Nations shall have the right to become parties to conventions affecting the interests of all States.

The position of the Government of the German Democratic Republic on article XVII of the Convention, as far as the application of the Convention to colonial and other dependent territories is concerned, is governed by the provisions of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514(XV) of 14 December 1960) proclaiming the necessity of bringing a speedy and unconditional end to colonialism in all its forms and manifestations.”

(1) The following Governments do not accept the reservation contained in the instrument of accession of the Government of the German Democratic Republic, and the texts of their Notes to this effect were circulated by the depository: 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 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.”

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

(CLIC PROT 1976)

Done at London,
19 November 1976
Entered into force: 8 April 1981

Protocole à la Convention Internationale sur la Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures

(CLIC PROT 1976)

Signé à Londres,
le 19 novembre 1976
Entré en vigueur: 8 avril 1981

Contracting States
as at 30.VI.2006

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<th>Effective date of denunciation</th>
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</table>

Number of Contracting States: 54

\(^1\) 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

<table>
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<tr>
<th>Country</th>
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<td>China (in respect of HKAR)</td>
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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

**Protocol à la Convention Internationale sur la Responsabilité civile pour les dommages dus à la pollution par les hydrocarbures, 1969**

**CLC PROT 1992**

Done at London, 27 November 1992
Entry into force: 30 May 1996

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Number of Contracting States: 113

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 )
Declarations, Reservations and Statements

Germany
The instrument of ratification of Germany was accompanied by the following declaration:


New Zeland
The instrument of accession of New Zeland contained the following declaration:

“And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zeland with the Depositary”.

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).
### Intervention 1969

**International Convention relating to**
**Intervention on the high seas in cases of oil pollution casualties, 1969**

**Convention Internationale sur L'intervention en haute mer en cas d'accident entraînant ou pouvant entraîner une pollution par les hydrocarbures, 1969**

**(Intervention 1969)**

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Done at Brussels, 29 November 1969
Entry into force: 6 May 1975

Signé à Bruxelles le 29 Novembre 1969
Entrée en vigueur: 6 Mai 1975
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Number of Contracting States: 83

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 acceded 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.VI.1975
- Bermuda 19.IX.1980 1.XII.1980
- Anguilla
- British Antarctic Territory**
- British Virgin Islands 8.IX.1982 8.IX.1982
- Cayman Islands
- Falkland Islands and Dependencies**
- Montserrat
- Pitcairn, Henderson, Ducie and Oeno Islands
- St. Helena and Dependencies
- Turks and Caicos Islands 8.IX.1982 8.IX.1982
- United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus
- Isle of Man 27.VI.1995 27.VI.1995

The United States notified the depositary that it extended the Convention to the following territories:

- Puerto Rico, Guam, Canal Zone, 9.IX.1975 6.VI.1975
- Virgin Islands, American Samoa, 9.IX.1975 6.VI.1975
- Trust Territories of the Pacific Islands
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, 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.
### Intervention Prot. 1973

**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

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¹ Accessions after the initial ratifications.
² Accessions after the initial ratifications.
³ Accessions after the initial ratifications.
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Number of Contracting States: 48

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
- Pitcairn, Henderson, Ducie and Oeno Islands
- St. Helena and Dependencies
- Turks and Caicos Islands
- United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia on the Island of Cyprus
- Isle of Man

The Netherlands declared ratification to be effective also in respect of:
- Netherlands Antilles
- Aruba (with effect from 1 January 1986)

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).
** Ceased to apply to Hong Kong with effect from 1 July 1997.
### International Convention on the Establishment of an International Fund for compensation for oil pollution damage

**Date of deposit** of instrument | **Date of entry into force** | **Effective date of denunciation**
--- | --- | ---
Albania (accession) | 6.IV.1994 | 5.VII.1994
Albania (accession) | 6.IV.1994 | 5.VII.1994
Benin (accession) | 1.XI.1985 | 30.I.1986
China | 1.V.1997 | 5.I.2000
Côte d’Ivoire (accession) | 5.X.1987 | 3.I.1988
Croatia (succession) | – | 8.X.1991 | 30.VII.1999
Djibouti (accession) | 1.III.1990 | 30.V.1990 | 17.V.2002
Estonia (accession) | 1.XII.1992 | 1.III.1993

**Done at Brussels, 18 December 1971**

**Entered into force: 16 October 1978**
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Declarations, Reservations and Statements

Canada
The instrument of accession of Canada was accompanied by the following declaration (in the English and French languages):
“The Government of Canada assumes responsibility for the payment of the obligations contained in articles 10, 11 and 12 of the Fund Convention. Such payments to be made in accordance with section 774 of the Canada Shipping Act as amended by Chapter 7 of the Statutes of Canada 1987”.

Federal Republic of Germany
The instrument of ratification of the Federal Republic of Germany was accompanied by the following declaration (in the English language):
“that the said Convention shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany.”

Syrian Arab Republic
The instrument of accession of the Syrian Arab Republic contains the following sentence (in the Arabic language):
[Translation]
“...the accession of the Syrian Arab Republic to this Convention ... in no way implies recognition of Israel and does not involve the establishment of any relations with Israel arising from the provisions of this Convention.”
<table>
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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

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* The 1971 Fund Convention ceased to be in force on 24 May 2002 and therefore the Convention does not apply to incidents occurring after that date.
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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
   )
Declarations, Reservations and Statements

Canada
The instrument of accession of Canada was accompanied by the following declaration:
“By virtue of Article 14 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992, the Government of Canada assumes responsibility for the payment of the obligations contained in Article 10, paragraph 1.”

Federal Republic of Germany
The instrument of ratification by Germany was accompanied by the following declaration:

New Zealand
The instrument of accession of New Zealand contained the following declaration:
“And declares that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zealand with the Depositary”.

Spain
The instrument of accession by Spain contained the following declaration:
[Translation]
“In accordance with the provisions of article 30, paragraph 4 of the above mentioned Protocol, Spain declares that the deposit of its instrument of accession shall not take effect for the purpose of this article until the end of the six-month period stipulated in article 31 of the said Protocol”.

* 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).

(FUND PROT 2003)

Done at London, 16 may 2003
Entry into force: 3 March 2005

Date of signature or deposit of instrument | Date of entry into force
--- | ---
Belgium (accession) | 4.XI.2005 4.II.2006
Croatia (accession) | 17.II.2006 17.V.2006
Denmark (signature) | 24.II.2004 3.III.2005
Finland (accession) | 27.V.2004 3.III.2005
France (acceptance) | 29.VI.2004 3.III.2005
Germany (accession) | 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

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1 Extended to Greenland (3 March 2005) and Faroe Islands (19 June 2006).
2 With a declaration, reservation or statement.
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.”

(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”.

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**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

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**Convention d’Athènes relative au Transport par mer de passagers et de leurs bagages**

(PAL 1974)

Signée à Athènes, le 13 décembre 1974

Entrée en vigueur: 28 avril 1987

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Number of Contracting States: 32

1 With a declaration or reservation.
2 As from 26.XII.1991 the membership of the USSR in the Convention is continued by the Russian Federation.
3 The United Kingdom declared ratification to be effective also in respect of:
   - Bailiwick of Jersey
   - Bailiwick of Guernsey
   - Isle of Man
   - Bermuda
   - British Virgin Islands
   - Cayman Islands
   - Falkland Islands*
   - Gibraltar
   - Hong Kong**
   - Montserrat
   - Pitcairn
   - Saint Helena and Dependencies
5 Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.
6 Applies to Macau Special Administrative Region with effect from 24 June 2005.

* 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

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Number of Contracting States: 25

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).
Argentina (1)
The instrument of accession of the Argentine Republic contained the following reservation (in the Spanish language):

"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

Protocol 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

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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

Status as 30 June 2006

Protocol 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

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Number of Contracting States: 4
### Part III - Status of Ratifications to IMO Conventions

#### (LLMC 1976)

Done at London, 19 November 1976  
Entered into force: 1 December 1986

**Convention on Limitation of Liability for Maritime Claims (LLMC 1976)**

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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).
4 With a notification under article 15(4).
5 The instrument of accession contained the following statement: "AND WHEREAS it is not intended that the accession by the Government of New Zealand to the Convention should extend to Tokelau;".
6 With a notification under article 8(4).
7 The United Kingdom declared its ratification to be effective also in respect of:
   - Bailiwick of Jersey
   - Bailiwick of Guernsey
   - Isle of Man
   - Belize
   - Bermuda
   - British Virgin Islands
   - Cayman Islands
   - Falkland Islands
   - Gibraltar
   - Hong Kong
   - Montserrat
   - Pitcairn
   - Saint Helena and Dependencies
   - Turks and Caicos Islands
   - United Kingdom Sovereign Base Areas of
     - Akrotiri and Dhekelia in the Island of Cyprus
   - Anguilla
   - British Antarctic Territory
   - British Indian Ocean Territory
   - South Georgia and the South Sandwich Islands
     notification received
     4.II.1999
**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.

1. 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

**Switzerland**

"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 Responsabilité en matière de créances maritimes

(LLMC PROT 1996)

Signée à Londre le 2 mai 1996
Entrée en vigueur: 13 mai 2004

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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

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### Convention Internationale de l’Assistance, 1989  
(ASSISTANCE 1989)

Signée a Londres le 28 avril 1989  
Entrée en vigueur: 14 juillet 1996

Done at London: 28 April 1989  
Entered into force: 14 July 1996

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<td>Russian Federation (ratification)¹</td>
<td>25.V.1999</td>
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</tr>
</tbody>
</table>
Number of Contracting States: 54

1 With a reservation or statement
2 With a notification
3 The United Kingdom declared its ratification to be effective in respect of:
   The Bailiwick of Jersey
   The Isle of Man
   Falkland Islands*
   Montserrat
   South Georgia and the South Sandwich Islands
   Hong Kong** as from 30.V.1997
   Anguilla
   British Antarctic Territory
   British Indian Ocean Territory
   Cayman Islands
   Pitcairn, Henderson, Ducie and Oeno Islands with effect from 22.7.98
   St Helena and its Dependencies
   Turks and Caicos Islands
   Virgin Islands

4 Applies to the Hong Kong Special Administrative Region with effect from 1.VII.1997.
5 Applies to Macau Special Administrative Region with effect from 24 June 2005.

* A dispute exists between the Governments of Argentina and the United Kingdom of Great Britain and Northern Ireland concerning sovereignty over the Falkland Islands (Malvinas).

** Ceased to apply to Hong Kong with effect from 1.VII.1997.
Declarations, Reservations and Statements

Canada
The instrument of ratification of Canada was accompanied by the following reservation:
“Pursuant to Article 30 of the International Convention on Salvage, 1989, the Government of Canada reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

China
The instrument of accession of the People’s Republic of China contained the following statement:
[Translation]
“That in accordance with the provisions of article 30, paragraph 1 of the International Convention on Salvage, 1989, the Government of the People’s Republic of China reserves the right not to apply the provisions of article 30, paragraphs 1(a), (b) and (d) of the said Convention”.

Islamic Republic of Iran
The instrument of accession of the Islamic Republic of Iran contained the following reservation:
“The Government of the Islamic Republic of Iran reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b), (c) and (d)”.

Ireland
The instrument of ratification of Ireland contained the following reservation:
“Reserve the right of Ireland not to apply the provisions of the Convention specified in article 30(1)(a) and (b) thereof”.

Mexico
The instrument of ratification of Mexico contained the following reservation and declaration:
[Translation]
“The Government of Mexico reserves the right not to apply the provisions of this Convention in the cases mentioned in article 30, paragraphs 1(a), (b) (c) and (d), pointing out at the same time that it considers salvage as a voluntary act “.

Norway
The instrument of ratification of the Kingdom of Norway contained the following reservation:
“In accordance with Article 30, subparagraph 1(d) of the Convention, the Kingdom of Norway reserves the right not to apply the provisions of this Convention when the property involved is maritime cultural property of prehistoric, archaeological or historic interest and is situated on the sea-bed”.

Saudi Arabia(1)
The instrument of accession of Saudi Arabia contained the following reservations:
[Translation]

---

(1) 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.

Status as 30 June 2006

<table>
<thead>
<tr>
<th>Country</th>
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1 With a reservation.
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Oil pollution preparedness 1990

<table>
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<tr>
<td><strong>Argentina</strong>&lt;sup&gt;(1)&lt;/sup&gt;</td>
</tr>
<tr>
<td>The instrument of ratification of the Argentine Republic contained the following reservation:</td>
</tr>
<tr>
<td><strong>Translation</strong></td>
</tr>
<tr>
<td>“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”.</td>
</tr>
</tbody>
</table>

| **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.

<sup>(1)</sup> 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.

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</table>

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.

<table>
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<th>Country</th>
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Number of Contracting States: 11, representing approximately 9.07% of the world’s merchant shipping

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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

<table>
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<th>Country</th>
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### Part III - Status of Ratifications to IMO Conventions

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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.
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


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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.

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’éditeur / Editor’s notes:
- Les dates mentionnées sont les dates du dépôt des instruments.
- The dates mentioned are the dates of the deposit of instruments.
United Nations Convention on a

Code of Conduct

for liner conferences

Geneva, 6 April 1974

Entered into force: 6 October 1983

Convention des Nations Unies sur

un

Code de Conduite

des conférences maritimes

Genève, 6 avril 1974

Entrée en vigueur: 6 octobre 1983

Algeria (r) 12.XII.1986
Bangladesh (a) 24.VII.1975
Barbados (a) 29.X.1980
Belgium (r) 30.IX.1987
Benin (a) 27.X.1975
Bulgaria (a) 12.VII.1979
Burkina Faso (a) 30.III.1989
Cameroon (a) 15.VI.1976
Cape Verde (a) 13.I.1978
Central African Republic (a) 13.V.1977
Chile (S) 25.VI.1975
China (1) (a) 23.IX.1980
Congo (a) 26.VII.1982
Costa Rica (r) 27.X.1978
Croatia (r) 8.X.1991
Cuba (a) 23.VII.1976
Czech Republic (AA) 4.VI.1979
Denmark (except Greenland and the Faroe Islands) (a) 28.VI.1985
Egypt (a) 25.I.1979
Ethiopia (r) 1.IX.1978
Finland (a) 31.XII.1985
France (AA) 4.X.1985
Gabon (r) 5.VI.1978
Gambia (S) 30.VI.1975
Germany (r) 6.IV.1983
Ghana (r) 24.VI.1975
Guatemala (r) 3.III.1976
Guinea (a) 19.VIII.1980
Guyana (a) 7.I.1980
Honduras (a) 12.VI.1979
India (r) 14.II.1978
Indonesia (r) 11.I.1977
Iraq (a) 25.X.1978

(1) Applied to the Hong Kong Special Administrative Region with effect from 1.VII.1997.
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### Hamburg Rules 1978

**United Nations Convention on the Carriage of goods by sea**

**Hamburg, 31 March 1978**

**“HAMBURG RULES”**

Entered into force: 1 November 1992

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(¹) The Convention was signed on 6 March 1979 by the former Czechoslovakia. Respectively on 28 May 1993 and on 2 Jun 1993 the Slovak Republic and the Czech Republic deposited instruments of succession. The Czech Republic then deposited instrument of ratification on 23 Jun 1995.
United Nations Convention on the
International multimodal transport of goods
Geneva, 24 May 1980
Not yet in force.

Convention des Nations Unies sur le
Transport multimodal international de marchandises
Genève 24 mai 1980
Pas encore en vigueur.

Burundi (a) 4.IX.1998
Chile (r) 7.IV.1982
Georgia (a) 21.III.1996
Lebanon (a) 1.VI.2001
Liberia (a) 16.IX.2005
Malawi (a) 2.II.1984
Mexico (r) 11.II.1982
Morocco (r) 21.I.1993
Rwanda (a) 15.IX.1987
Senegal (r) 25.X.1984
Zambia (a) 7.X.1991

(UNCLOS 1982)
Montego Bay 10 December 1982
Entered into force:
16 November 1994

Convention des Nations Unies sur les Droit de la Mer
Montego Bay 10 decembre 1982
Entrée en vigueur:
16 Novembre 1994

Albania 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 Darussalam 5.XI.1996
Bulgaria 15.V.1996
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**UNCLOS 1982**
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
Vanuatu 10.VIII.1999
Viet Nam 25.VII.1994
Yemen, Democratic Republic of 21.VII.1987
Zambia 7.III.1983
Zimbabwe 24.II.1993


Convention des Nations Unies sur les Conditions d’Immatriculation des navires 1986

Geneva, 7 February 1986
Not yet in force.

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.I.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

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

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 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.

Convention Internationale de 1993 su les Privilèges et hypothèques maritimes

Signée à Genève le 6 mai 1993
Entrée en vigueur: 5 septembre 2004

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.

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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.

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 ownership 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.

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.

XII. ANTWERP - 1921
*President:* Mr. Louis FRANCK.

XIII LONDON - 1922
*President:* Sir Henry DUKE.

XIV. GOTHENBURG - 1923
*President:* Mr. Efriel LÖFGREN.

XV. GENOA - 1925
*President:* Dr. Francesco BERLINGIERI.

XVI. AMSTERDAM - 1927
*President:* Mr. B.C.J. LODER.
*Subjects:* Compulsory insurance of passengers - Letters of indemnity - Ratification of the Brussels Conventions.

XVII. ANTWERP - 1930
*President:* Mr. Louis FRANCK.
*Subjects:* Ratification of the Brussels Conventions - Compulsory insurance of passengers - Jurisdiction and penal sanctions in matters of collision at sea.

XVIII. OSLO - 1933
*President:* Mr. Edvin ALTEN.
*Subjects:* Ratification of the Brussels Conventions - Civil and penal jurisdiction in matters of collision on the high seas - Provisional arrest of ships - Limitation of Shipowners’ Liability.

XIX. PARIS - 1937
*President:* Mr. Georges RIPERT.
*Subjects:* Ratification of the Brussels Conventions - Civil and penal jurisdiction in the event of collision at sea - Arrest of ships - Commentary on the Brussels Conventions - Assistance and Salvage of and by Aircraft at sea.

XX. ANTWERP - 1947
*President:* Mr. Albert LILAR.
XXI. AMSTERDAM - 1948  
*President:* Prof. J. OFFERHAUS  

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  

XXV. ATHENS - 1962  
*President:* Mr. Albert LILAR  
*Subjects:* Damages in Matters of Collision - Letters of Indemnity - International Statute of Ships in Foreign Ports - Registry of Ships - Coordination of the Convention of Limitation and on Mortgages - Demurrage and Despatch Money - Liability of Carriers of Luggage.

XXVI. STOCKHOLM - 1963  
*President:* Mr. Albert LILAR  
*Subjects:* Bills of Lading - Passenger Luggage - Ships under construction.

XXVII. NEW YORK - 1965  
*President:* Mr. Albert LILAR  
*Subjects:* Revision of the Convention on Maritime Liens and Mortgages.

XXVIII. TOKYO - 1969  
*President:* Mr. Albert LILAR  
*Subjects:* “Torrey Canyon” - Combined Transports - Coordination of International Convention relating to Carriage by Sea of Passengers and their Luggage.

XXIX. ANTWERP - 1972  
*President:* Mr. Albert LILAR  
*Subjects:* Revision of the Constitution of the International Maritime Committee.
Conferences of the Comité Maritime International

XXX. HAMBURG - 1974
President: Mr. Albert LILAR

XXXI. RIO DE JANEIRO - 1977
President: Prof. Francesco BERLINGIERI

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

XXXIV. PARIS - 1990
President: Prof. Francesco BERLINGIERI

XXXV. SYDNEY - 1994
President: Prof. Allan PHILIP

XXXVI. ANTWERP - 1997 - CENTENARY CONFERENCE
President: Prof. Allan PHILIP

XXXVII. SINGAPORE – 2001
President: Patrick GRIGGS

XXXVIII. VANCOUVER – 2004
President: Patrick GRIGGS